TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB, CHARLES BOBB, HENRY C. BAGOT, ET AL., PLAINTIFFS IN ERROR,

vs.

DORSEY A. JAMISON, ADMINISTRATOR OF THE ESTATE OF CHARLES L. BOBB, DECEASED, AND JOHN H. BOBB.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED AUGUST 13, 1891.

(14,805.)

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1 In the Supreme Court of Missouri.

STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 29th day of September, 1888, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript in the case of D. A. Jamison, adm'r, *et al.*, respondents, *vs.* Henry C. Bagot *et al.*, appellants. Which said transcript is in words and figures as follows, to wit:

2 In the Supreme Court.

JAMISON, Adm'r, *et al.*, Respondents,
vs.
BAGOT *et al.*, Appellants.

The parties, appellant and respondent, agree that the exhibit mentioned in appellants' petition to have the bill of exceptions amended filed in this court may be inserted in the record in this cause with & after the affidavits filed in the court below in support of Martha E. Bobb's motion for a new trial, said exhibit being a record of proceedings (& copies of papers filed thereon) in the probate court of the city of St. Louis, a copy of which exhibit is attached to the order of this court in said cause, made Dec'r 15th, 1890.

T. J. ROWE, *Att'y for Respondents.*
M. KINEALY & JAS. R. KINEALY,
Att'ys for Appellant Martha E. Bobb.

(Endorsed:) Filed Jan. 9th, 1891. Philip H. Zepp, clerk.

3 STATE OF MISSOURI, *City of St. Louis,* } *ss:*

Be it remembered that on the fourth day of April, in the year of our Lord one thousand eight hundred and eighty-one, there was filed in the office of the clerk "*of the clerk*" of the circuit court, city of St. Louis, a petition in a certain cause wherein Dorsey A. Jamison, as administrator *de bonis non* of Charles L. Bobb, deceased, and John H. Bobb are plaintiffs, and Henry C. Bagot, John Letcher, Charles Bobb, and Martha E. Bobb are defendants; which petition is in words and figures as follows, to wit:

Petition.

STATE OF MISSOURI, *City of St. Louis,* } ss:

In the Circuit Court, City of St. Louis.

DORSEY A. JAMISON, as Administrator *de bonis non* of Charles L. Bobb, Deceased, and JOHN H. BOBB, Plaintiffs,
vs.
HENRY C. BAGOT, JOHN LETCHER, CHARLES BOBB, and MARTHA E. BOBB, Defendants.

Plaintiffs state that heretofore, on the 15th day of June, 1878, the said circuit court for the city of St. Louis did render its final judgment and decree in a certain suit then therein depending, wherein the said John H. Bobb, who is one of the plaintiffs herein, was the plaintiff and Charles Bobb, one of the defendants herein; William F. Taylor and Lucy G. Taylor, his wife; James K. Taylor
4 and Cora S. Taylor, his wife; George L. Bobb, John D. Stevenson, and Hannah Stevenson, his wife; Irene Bobb, Philip M. Bobb, and Charles H. Bobb, minors, appearing by Abraham Siegel, their guardian *ad litem*, and Martrom D. Lewis, public administrator in charge of the estate of Charles L. Bobb, deceased, were defendants; that in and by its said final judgment and decree the said circuit court did decree and adjudge that said Charles Bobb, who is one of the defendants herein, was liable to the representatives of said Charles Bobb, deceased, for, and that the said Martrom D. Lewis, administrator of the estate of the said Charles Bobb, recover from said Charles Bobb, the sum of $18,382.50, the same to bear interest until paid at the rate of six per centum per annum; that in and by its said final judgment and decree said court did further adjudge and decree that the said Charles Bobb was liable to the said John H. Bobb in his own right, and that the said John H. Bobb recover of said Charles Bobb the sum of $27,538.83, the same to bear interest until paid at the rate of six per centum per annum; that in and by its said final judgment and decree the said court did further order, adjudge, and decree that said defendant was liable to said Lucy G. Taylor or her assigns in the sum of $36,263.83; and it was further provided in and by said final judgment and recited that, it appearing to the court the said John H. Bobb had, since the institution of said suit, by due assignment and conveyance thereof, become the assignee of all and singular the right, interest, claim, and demand of her, the said Lucy G. Taylor, and of the said
5 William F. Taylor, if any, of, in, and to the trust property in said suit described, and all demands arising therefrom or in respect thereof against said defendant, Charles Bobb, it was ordered, adjudged, and decreed that the said John H. Bobb do also recover of said defendant, Charles Bobb, the further sum of $36,263.83, the same to bear interest at the rate of six per centum per annum until paid; and it was further in and by said decree provided that the

costs of said suit and all proceedings therein be taxed against said defendant, Charles Bobb, and that said John H. Bobb and the said defendants in said suit, other than said Charles Bobb, recover of him, said Charles Bobb, all costs in said suit by them respectively laid out and expended, and that execution issue therefor accordingly; that said suit brought by said John H. Bobb as plaintiff against Charles Bobb and others therein was filed in said circuit court during the year 1869, and that at the time of filing said suit said Charles Bobb was liable and indebted to said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor in said several sums which he was adjudged and decreed to pay as aforesaid; that said indebtedness and liability commenced about the year 1845 and from time to time and constantly increased, until at the time of bringing said suit as aforesaid it amounted, after allowing all offsets, to the sums adjudged and decreed against said Charles Bobb in said suit of John H. Bobb *versus* Charles Bobb and others; that in the month of September, 1880, the said Martrom D. Lewis resigned his charge of the said
6 estate of Charles L. Bobb and ceased to administer on the same, and that the probate court for the city of St. Louis did, after such resignation and on the 22nd day of September, 1880, appoint Dorsey A. Jamison, one of the plaintiffs herein, administrator *de bonis non* of said estate, and that said Jamison thereupon duly qualified as such administrator and is still acting as such; that heretofore and on or about the 23rd day of September, 1865, one John W. Burd, with Eliza A. Burd, his wife, executed and delivered their deed of trust of that date, whereby they conveyed to William T. Selby, since deceased, and William C. Jamison, as trustees for one John S. Miller, the following-described real estate, which lies in the — of St. Louis and State of Missouri, to wit: First, a tract containing twenty-six and $\frac{92}{100}$ acres, together with all the improvements thereon in United States survey number 2976, and bounded on the west by Goodfellow avenue, south by land conveyed by said Burd and wife to Elizabeth M. Rucker May 1, 1860, of record in Book 248, page 256, of the then recorder's office of the county of St. Louis, Missouri; east by land formerly owned by John Goodfellow, and north by land of the estate of Charles Semple and the tract next herein described; second, a tract of two and $\frac{78}{100}$ acres in United States survey number 1913, to wit: Beginning at a point in the north line of said survey number 2976, where the eastern line of Goodfellow avenue intersects said north line of survey 2976, thence north 15° 45 E. with east line of said avenue four chains and 20 links to the school-house lot, thence eastwardly 60° 15 E. parallel to said north line of survey number 2976 six chains and seventeen
— to a roadway 50 links wide, thence south 29° 15 W. with
7 said roadway four chains and eight links to said north line of survey 2976, thence with said north line of said — 2976 four chains and seventy-three links to the place of beginning; that said deed of trust is recorded in the recorder's — of the city of St. Louis, in Book 304, on page 484, and was given to secure eleven notes of even date with said deed, one being a principal note *note*

for the sum of eight thousand dollars, due five years after date, and ten being semi-annual interest notes for 320 dollars each, for the interest to accrue on said principal note during said five years; that after the making of said deed of trust and notes and before the sale under said deed of trust hereinafter set out the said Charles Bobb became the owner by purchase of the said deed of trust and the principal note and the unpaid interest notes secured thereby; that after said Charles Bobb so became the owner by purchase of said deed of trust and notes, default was made in the payment of the said principal note and the said Charles Bobb caused the said Jamison (who was the surviving trustee, the said Selby having heretofore departed this life) to advertise said real estate conveyed by said deed of trust for sale at the east front door of the court-house in said city of St. Louis, and said Jamison did, on the 6th day of February, 1879, under the powers conferred on him by said deed of trust and at the instance of said Charles Bobb, who was and is the owner of said principal note, sell said real estate at public auction at said court-house door, and at said sale said property was purchased by said Charles Bobb, acting in that behalf through the defendant Henry C. Bagot, who acted in that behalf as the agent of said Charles Bobb, for the price and sum of
8 four thousand dollars, which said sum, after deducting therefrom the costs and expenses of sale, was credited on said principal note; that no money was actually paid by said Charles Bobb or said Bagot for said property so sold, except the amount necessary to pay the costs and expenses of said sale, which money was in fact furnished by defendant Charles Bobb; that after said sale said Charles Bobb, acting in person and through his agents and servants, caused said trustee, Jamison, to execute, in pursuance of said sale, a deed for all of said real estate to the defendant Bagot, and to deliver the same; that said deed to defendant Bagot has never been filed for record in said recorder's office for the city of St. Louis, although more than — year has elapsed since the making and the delivery of said deed; and plaintiff further says that he is informed and believes, and therefore states, that since the delivery of said deed to defendant Bagot the said Bagot has, at the instance and request of Charles Bobb, conveyed the said real estate to the defendant John Letcher, and that said Letcher now holds the legal title to said real estate; that said Letcher never paid any consideration for said deed, and simply holds said property in trust for said Charles Bobb, who is the real owner thereof; that said John Letcher has never placed his deed upon record, although, as plaintiff is informed and believes, and therefore states, a long period of time has elapsed since said Letcher received his said deed; that the said defendant, Charles Bobb, so caused said real estate to be conveyed first to said Bagot and afterwards to said Letcher, and also caused said conveyance to be withheld from record, with the fraudulent purpose and design of hindering and delaying his said creditors, and to prevent said property from being subjected to the payment
9 of said judgments; that neither said Bagot or said Letcher *have* or ever had any interest in said property, nor have they

or either of them ever paid anything therefor, but said property in fact belongs to said defendant, Charles Bobb, who has caused the title thereto to be placed successively in said Bagot and Letcher, with the fraudulent design aforesaid; that the defendant Martha E. Bobb is the wife of the defendant Charles Bobb; that, as plaintiffs are informed and believe, and therefore state, the said defendant, Martha E. Bobb, now claims and asserts that she is in truth and in fact the owner of the real estate hereinbefore described, and that she was in truth and in fact the owner of the notes secured by deed of trust under which said real estate was sold as hereinbefore set forth, and that the said real estate was bought in for her, and that she is now the equitable owner of the same, although said real estate now stands in the name of said John Letcher. Wherefore the plaintiffs make the said Martha E. Bobb a party defendant to this action.

That nothing has ever been collected on said judgments excepting the sum of six dollars, and that as to the balance of said judgments returns of *nulla bona* have been made on the executions issued thereon to the sheriff of the said city of St. Louis. Wherefore the plaintiffs pray the court that said real estate be decreed to be the property of defendant Charles Bobb, and as such to be subject to the lien of said judgment and decree so rendered as aforesaid against said Charles Bobb and in favor of said John H. Bobb and Lucy G. Taylor and the estate of the said Charles L. Bobb, and that said real estate be decreed to be sold as the property of the said Charles Bobb in order that the same may be applied as far as it will go towards the payment of said judgments, and for such other and further relief as to the court may seem meet and as in equity belongs.

HITCHCOCK, LUBKE AND PLAYER,
Att'ys for Plaintiff.

Statement of Summons, &c.

Upon the filing of said petition a summons was issued for said defendants, directed to the sheriff of said city of St. Louis, which said summons was by said sheriff returned duly executed as to the said defendant, Henry C. Bagot, on the 15th day of April, 1881, and as to said defendant, Charles Bobb, on the 23rd day of April, 1881; said defendants, John Letcher and Martha E. Bobb, were not found in said city of St. Louis.

And afterwards, to wit, on the 9th day of May, 1881, a summons was issued for said defendants, John Letcher and Martha E. Bobb, directed to the sheriff of St. Louis county; which said summons was by said sheriff returned duly executed as to both of said defendants on the 21st day of May, 1881.

And afterwards, to wit, on the 8th day of June, 1881, the answer of said defendants was filed in said cause; which said answer is in words and figures as follows, to wit:

Answer.

In the Circuit Court, City of St. Louis, June Term, 1881.

DORSEY A. JAMISON, as Administrator *de bonis non* of Charles L. Bobb, Deceased, and JOHN H. BOBB, Plaintiffs,
vs.
HENRY C. BAGOT, JOHN LETCHER, CHARLES BOBB, and MARTHA BOBB, Defendants.

Now, at this day, come the defendants herein and for their
11 answer to plaintiffs' petition herein deny each and every allegation therein contained. Wherefore, having fully answered, pray hence to be dismissed with their costs.

LEE AND CHANDLER,
Att'ys for Def'ts.

And afterwards, at the February term, 1886, of said court the following proceedings were had in said cause, to wit:

Motion for Security for Costs Sustained.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.* } 56004.

SATURDAY, *February 27th*, 1886.

The court, having considered the motion for security for costs filed herein, doth sustain said motion, and order that plaintiff John H. Bobb, within fifteen days from this date, either give a bond for costs or deposit seventy-five dollars as security for costs with the clerk of this court.

Bond for Costs Filed and Approved.

MONDAY, *March 8th*, 1886.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.* } 56004.

Bond for costs given and approved.

Which said bond for costs is in words and figures as follows, to wit: "I acknowledge myself bound for all costs that have accrued or may accrue in the case of Dorsey A. Jamison, administrator, *et al.* against Henry C. Bagot *et al.*"

Witness my hand and seal at St. Louis this eighth day of March, 1886.

ROB'T S. MACDONALD. [SEAL.]

Approved by the court March 8th, 1886.
Attest: CHAS. F. VOGEL, *Clerk.*

12 And afterwards, at the April Term, 1886, of said court, the following proceedings were had in said cause, to wit:

Death of John Letcher Suggested.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.* } (56004.)

MONDAY, *April 5th*, 1886.

Now come plaintiffs, by attorney, and suggest to the court the death of defendant John Letcher.

And afterwards, at the October term of said court, the following proceedings were had:

Cause Revived against Widow & Legal Representatives of Jno. Letcher.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.* } (56004.)

MONDAY, *October 4th*, 1886.

On motion of plaintiffs, by attorney, it is ordered by the court that this cause be revived and proceed against the widow and administratrix and heirs of John Letcher, deceased, unless cause against such revivor be shown at the next term of this court, and that summons issue to St. Louis county against Louisa Letcher, widow and administratrix of said John Letcher, deceased; to St. Louis county against Campbell Letcher, to Saline county against William H. Letcher, and to the city of St. Louis against Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, her husband, all heirs of John Letcher, deceased, to show cause, if any they have, on or before the fourth day of said term, why
13 said cause should not be revived and proceed against them as such heirs and representatives of John Letcher, deceased.

Statement of Execution by She-ff of Summons on Widow and Legal Reps. of John Letcher.

Thereupon a summons was issued for said Giles C. Letcher, which was returned executed on the 21st day of October, 1886. A summons was also issued for said William H. Letcher, directed to the sheriff of Saline county, which said summons was by said sheriff returned duly executed on the 12th day of November, 1886. A summons was also issued for said Louisa Letcher, widow and administratrix of John Letcher, deceased, and Campbell Letcher, directed to the sheriff of St. Louis county, which said summons was by said sheriff returned duly executed as to the said Louisa Letcher, widow and administratrix of John Letcher, deceased, on the 12th day of November, 1886; said Campbell Letcher was not found in

said county. A summons was also issued for said Laura C. Letcher, Julia A. Letcher, a minor; Fannie M. Letcher, a minor; Sarah S. Letcher, a minor; Julia A. Ashbrook and Levi L. Ashbrook, her husband, directed to the sheriff of the city of St. Louis; which said summons was by said sheriff returned duly executed on the 11th day of November, 1886, as to said Laura C. Letcher, Fannie M. Letcher, a minor; Sarah S. Letcher, a minor, and Julia A. Letcher, and returned duly executed on the 12th day of November, 1886, as to said Levi L. Ashbrook and Julia A. Ashbrook. A summons was also issued for said Robert F. Letcher, directed to the sheriff of Washington county; which said summons was by said sheriff returned duly executed on the 15th day of November, 1886.

14 And afterwards, to wit, on the 6th day of December, 1886, the answer of said Louisa Letcher was filed in said cause; which said answer is in words and figures as follows, to wit:

Answer of Louisa Letcher.

DORSEY A. JAMISON, Adm'r, &c.,
vs.
HENRY C. BAGOT & *al.* } No. 56004. Room 4.

Comes now Louisa Letcher, adm'x of John Letcher, and, in her own proper person and for answer to the petition of the plaintiffs herein, says she denies each and every allegation therein contained and prays hence to be dismissed.

M. F. TAYLOR,
For Louisa Letcher.

And afterwards, at the February term, 1887, of said court, the following further proceedings were had in said cause, to wit:

Motion to Strike Out Answer of Martha E. Bobb Overruled. Levi Ashbrook, Esq., Appointed Guardian ad Litem for Minor Def'ts. Consent to Act as Such Guardian Filed. Cause Cont'd.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

TUESDAY, *February 8th*, 1887.

The court, having considered the motion to strike out the answer of Martha E. Bobb, doth overrule said motion, and the court doth appoint Levi L. Ashbrook, guardian *ad litem* for the minor defendants, Julia A., Fannie M., and Sarah S. Letcher. Thereupon said Ashbrook files his consent to act as such guardian *ad litem*, and, on application of plaintiffs, it is ordered that this cause be continued at their costs, and that execution issue therefor against plaintiff John H. Bobb and Robert S. MacDonald, surety in the cost bond herein.

15 *L. L. Ashbrook, Guardian, Accepts.*

Circuit Court, City of St. Louis.

BOBB *et al.* *vs.* BAGOT *et al.* } (56004.) No. 5.

L. L. Ashbrook appointed guardian *ad litem* for minor Letcher heirs and consents to act.

L. L. ASHBROOK.

And afterwards, at the October term, 1887, of said court, the following further proceedings were had in said cause, to wit:

CHARLES L. BOBB, Adm'r, *vs.* HANRY C. BAGOT *et al.*

SATURDAY, *October 15th*, 1887.

Separate answer of Martha E. Bobb filed by leave of court. Answer of Levi L. Ashbrook, guardian *ad litem*, filed.

Which said separate answers are respectively in words and figures as follows, to wit:

Answer of Martha E. Bobb.

In the Circuit Court, City of St. Louis.

D. A. JAMISON, Adm'r & *al.*, Plaintiffs, *vs.* H. C. BAGOT *et al.*, Defendants. } No. 56004. Room 5.

Now come defendant Martha E. Bobb and, by leave of court, files this her separate answer to plaintiffs' petition and admits that she does claim the property described in plaintiffs' petition, and says she is the true and sole owner thereof, and that neither defendants

16 Bagot nor Letcher ever had any beneficial interest in said property, but merely held the legal title for short periods as trustees of and for the sole use and benefit of this defendant, and this defendant states that she has no knowledge or information sufficient to form a belief as to the truth of the facts stated in said petition.

M. KINEALY AND JAS. R. KINEALY,
Attorneys for Defendant Martha E. Bobb.

Answer of L. Ashbrook, Guard. ad Litem for Minor Def'ts Julia A., Fannie M., and Sarah S. Letcher.

In the Circuit Court, City of St. Louis, October Term, 1887.

D. A. JAMISON, Adm'r, *et al.*, Plaintiffs,
vs.
H. C. BAGOT *et al.*, Defendants. } No. 56004. Room 5.

Now comes Levi L. Ashbrook, guardian *ad litem* of the minor defendants Julia A. Letcher, Fannie M. Letcher, and Sarah S. Letcher, and states that he has no knowledge, information, or belief as to the truth of the facts stated in plaintiffs' petition, and demands strict proof of the same.

LEVI L. ASHBROOK,
Guardian ad Litem for said Defendants.

And afterwards, to wit, on the 19th day of October, 1887, said plaintiffs filed a reply to said separate answer of said defendant Martha E. Bobb, which is in the words and figures following, to wit:

Reply to Answer of Martha E. Bobb.

In the Circuit Court of the City of St. Louis, Oct. Term, 1887.

BOBB *et al.*
vs.
BAGOT *et al.* } Room 5.

Plaintiffs, for a reply to the new matter in the separate answer of defendant Martha E. Bobb, deny each and every allegation therein contained.

T. J. ROWE,
Att'y for Plaintiff.

17 And afterwards, at the February term, 1888, of said court, the following further proceedings were had in said cause, to wit:

Cause Dismissed as to Campbell Letcher. Decree.

DORSEY A. JAMISON, as Administrator *de Bonis Non* of Charles L. Bobb, Deceased, and JOHN H. BOBB
vs.
HENRY C. BAGOT, LOUISA LETCHER, Widow and Administratrix of John Letcher, Deceased; Campbell Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb and Martha E. Bobb. } (56004.)

TUESDAY, *February 21st*, 1888.

Now, at this day, come the plaintiff and the defendants Martha E. Bobb and Louisa Letcher, widow and administratrix of John Letcher,

deceased, and Henry C. Bagot and Charles Bobb, by their respective attorneys, and the minor defendants Julia A. Letcher, Fannie M. Letcher, and Sarah S. Letcher come by their guardian *ad litem*, Levi L. Ashbrook; and the defendant Campbell Letcher not having been served with summons in this cause, the plaintiff dismisses this cause as to the said Campbell Letcher; and the defendants William H. Letcher, Robert F. Letcher, Laura Letcher, Giles C. Letcher, Levi L. Ashbrook, and Julia A. Ashbrook, his wife, although being duly summoned and called, come not, but make default; wherefore, on motion of plaintiff, by attorney, it is ordered by the court that the petition herein be taken against them as confessed; and thereupon, this cause coming on for hearing, said parties appearing, submit this cause to the court upon the evidence and proofs
18 adduced and the court having heard the same and being thereof fully advised, finds that this court, in a cause wherein John H. Bobb was plaintiff and Charles Bobb and others were defendants, being case No. 13809 of this court, did decree that Martrom D. Lewis, as administrator of Charles L. Bobb, deceased, recover from the said Charles Bobb the sum of eighteen thousand three hundred and eighty-two $\frac{50}{100}$ dollars, with interest thereon at the rate of six per cent. per annum until paid, and did further adjudge and decree that John H. Bobb recover from the said Charles Bobb the sum of twenty-seven thousand five hundred and thirty-eight $\frac{83}{100}$ dollars, with interest thereon until paid, at the rate of six per cent. per annum, and that the said John H. Bobb, as assignee of Lucy G. Taylor and William F. Taylor, her husband, recover of the said Charles Bobb the sum of thirty-six thousand two hundred and sixty-three $\frac{83}{100}$ dollars, with interest thereon until paid, at the rate of six per cent. per annum, and that the costs of said suit be paid by the said Charles Bobb, and that at the time of the filing of said suit the said Charles Bobb was liable to said John H. Bobb, Lucy G. Taylor, and Charles L. Bobb in the several sums it was adjudged and decreed that he should pay as aforesaid, and that said indebtedness and liability began on the 23rd of January, 1845, and from time to time continuously increased until the year 1878. On June 15th, at the time of final judgment in said suit No. 13809 it amounted to said sums adjudged against Charles Bobb; that in the month of September, 1880, the said Dorsey A. Jamison, plaintiff herein was duly appointed by the probate court, city of St. Louis, to succeed the said Martrom D. Lewis as adminis-
19 trator of said Charles L. Bobb, and that the said Jamison duly qualified as such administrator; that upon the 23rd day of September, 1865, J. W. Burd and Eliza Burd, his wife, executed and delivered their deed of trust of that date, conveying to William T. Selby, since deceased, and William C. Jamison, as trustees for one John S. Miller, the following-described real estate, to wit: First, a tract containing twenty-six and $\frac{92}{100}$ acres, together with all the improvements thereon, in United States survey number 2976, and bounded on the west by Goodfellow avenue, south by land conveyed by said Burd and wife to Elizabeth M. Rucker, May 1st, 1860, of record in Book 248, page 256, of the then recorder's office

of the county of St. Louis, Missouri; east by land formerly owned by John Goodfellow, and north by land of the estate of Charles Semple, and the tract next herein described.

Second. A tract of two and $\frac{2}{100}$ acres in United States survey No. 1913, to wit: Beginning at a point in the north line of said survey number 2976 where the eastern line of Goodfellow avenue intese-ts said north line of survey No. 2976, thence north 15° 45′ E. with east line of said avenue four chains and 20 links to the schoolhouse lot; thence eastwardly 60° 15′ E. parallel to said north line of survey No. 2976 six chains and seventeen links to a roadway fifty links wide; thence south 29° 15′ W. with said roadway four chains and eight links to said north line of survey 2976; thence with said north line of said survey 2976 four chains and seventy-three links to the place of beginning; which deed of trust was given to secure eleven notes of even date with said deed, one being a principal note for the sum of eight thousand dollars due five years after date thereof, and ten being semi-annual interest notes for the sum of three hundred and twenty
20 dollars each; that after the making of said deed of trust and notes and before any sale under said deed the said Charles Bobb became the owner by purchase of said deed of trust, the principal note and the unpaid interest notes secured thereby; that after the same became the property of the said Charles Bobb default was made in the payment of the principal note, and the said Charles Bobb caused the said William C. Jamison, surviving trustee as aforesaid, to advertise the said real estate for sale in accordance with the terms of said deed of trust, and that the said Jamison did at the instance of said Charles Bobb sell said real estate in accordance with the terms of said deed of trust, and that said property was purchased at said sale by said Charles Bobb by and through the defendant Henry C. Bagot, acting as agent of him, the said Charles Bobb, for the sum of four thousand dollars; that the said sum of four thousand dollars was credited upon the said principal note, the then property of the said Charles Bobb, and that no money was paid on account of said sale except such amount as was necessary to pay the costs and expenses thereof, which said amount was paid by the said Charles Bobb; that after such sale, to wit, on the 6th day of February, 1879, said Charles Bobb caused said Jamison, trustee, to execute and deliver to the defendant Bagot a conveyance of said property, which conveyance was in trust for said Charles Bobb; that afterwards, to wit, on the 19th day of July, 1879, the said Charles Bobb caused the said defendant Bagot to convey the said real estate to the defendant John Letcher without consideration, and that the said Letcher took said conveyance in trust for Charles Bobb; that the said conveyance to the said Bagot and the said Letcher
21 *were* not placed on record until after the institution of this suit, to wit, on the 28th day of February, 1882, which day they were both filed for record; that the said defendant, Charles Bobb, caused the said real estate first to be conveyed to said Bagot and afterwards to said Letcher, and caused the said conveyance to be withheld from record with the design of hindering and delaying

his said creditors, John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, holders of said judgment, and to prevent said property from being subjected to the payment of said judgments; that neither said Bagot nor said Letcher now have or ever did have any interest in the said property, but that the said property in fact belongs and always has belonged since said sale by Jamison to said defendant, Charles Bobb. The court further finds that after the institution of this suit the said Charles Bobb caused the said John Letcher to convey the aforesaid real estate to Martha E. Bobb, wife of Charles Bobb by deed dated May 1, 1881, and recorded March 16th, 1882, in Book 677, page 18, of the recorder's office of the city of St. Louis, which conveyance the court doth find was without consideration and was made for the purpose of hindering and delaying the said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, in the collection of their said judgment, and the court doth further find that said conveyance from John Letcher to Martha E. Bobb was and is fraudulent, null, and void as to said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, deceased. The court further finds that the said judgments and decrees hereinbefore recited in favor of the said Martrom D. Lewis, administrator
22 of said Charles L. Bobb, and John H. Bobb, assignee of Lucy G. Taylor, and John H. Bobb, are unpaid and unsatisfied. The court doth find that the said real estate hereinbefore described was at the date of the institution of this suit the property of the said defendant, Charles Bobb, and is now his property and is subject to the lien of said judgments and decrees rendered as aforesaid against said Charles Bobb and in favor of said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, deceased, and the court doth therefore order, adjudge, and decree that the said real estate hereinbefore described be sold, and that the proceeds thereof be applied to the payment of said judgments in favor of said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of said Charles L. Bobb, against Charles Bobb, until said judgments are fully paid and satisfied, and if there remains any of said proceeds after fully paying and satisfying the aforesaid judgments that such remainder be applied, first, towards the payment of the costs of this suit, and the balance, if any, be paid to said Martha E. Bobb; that said sale be made by the sheriff of the city of St. Louis in the same manner and under the same regulations and requirements as prescribed by law for the sale of real estate under execution, and to this end that a special execution issue herein, and that the defendant Charles Bobb pay the costs of this suit, to be taxed, and for which also execution may issue.

23 *Motion of Mrs. M. E. Bobb for New Trial and Motion in Arrest Filed. Motion for Rehearing by Bagot and Bobb Filed. Affidavit of Mrs. Bobb in Support of Motion Filed.*

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

MONDAY, *February* 27, 1888.

Motions of defendant Martha E. Bobb filed for a new trial. Motion in arrest of Martha E. Bobb, motion for rehearing of Messrs. Bagot and Charles Bobb, filed. Affidavit of Martha E. Bobb in support of her motion for new trial filed.

Counter-affidavits of Lucy G. Taylor, Wm. P. Macklin, & Patrick Macklin Filed.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.*

WEDNESDAY, *March* 1*st*, 1888.

Counter-affidavits of Lucy G. Taylor, Wm. P. Macklin, and Patrick Macklin on motion for new trial filed.

Exhibit to Motion for New Trial Filed.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

FRIDAY, *March* 2*d*, 1888.

Exhibit to motion for new trial filed.

And afterwards the following further proceedings were had in said cause, to wit:

Affidavit of M. E. Bobb in Rebuttal on Motion for New Trial Filed.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.*

MONDAY, *March* 5*th*, 1888.

Affidavit of M. E. Bobb in rebuttal on motion for new trial filed.

And afterwards the following proceedings were had in said cause, to wit:

Motion of M. E. Bobb for New Trial Ov'd.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

MONDAY, *March 12th*, 1888.

Now, at this day, the motion heretofore filed by the defend-
24 ant Martha E. Bobb for new trial, being submitted to the court and duly considered, is overruled.

Motion of M. E. Bobb in Arrest of Judg't Ov'd.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

Now, at this day, the motion heretofore filed by Martha E. Bobb in arrest of judgment, being submitted to the court and duly considered, is overruled.

Motion of Bagot & Bobb for Rehearing Ov'd.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT & *al.*

Now, at this day, the motion heretofore filed by the defendants Bagot and Bobb for a rehearing, being submitted to the court and duly considered, is overruled.

25 And afterwards the further proceedings were had in said cause, to wit:

Bill of Ex. Allowed and Filed.

CHARLES L. BOBB'- ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.* (56004.)

MONDAY, *March 26th*, 1888.

Now, at this day, come the defendants, by attorney, and present to the court their bill of exceptions, which is allowed, signed, and sealed by the court, is filed herein, and made a part of the record in this cause.

Which said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

In the Circuit Court of the City of St. Louis, State of Missouri.

WILLIAM C. JAMISON, Adm'r,
vs.
HENRY C. BAGOT *et al.*

Be it remember- that on this 25th day of October, in the year of our Lord one thousand and eight hundred and eighty-seven, the above-entitled cause came on to be tried before the court, and the following proceedings were had therein: The plaintiff, to maintain the issues upon his part, introduced the following evidence: Defendant Martha E. Bobb objected to the introduction of any evidence as against her, because no allegations sufficient to charge her property were made in the petition. The court overruled the objection, and she then and there duly excepted. Plaintiff's counsel offers in evidence the decree and execution and return on the execution in case No. 13809 and the report of Judge Rombauer, referee; also of Referee Brown in said case, for the purpose of showing the origin of the indebtedness which culminated finally in said judgment and the different amounts and times of said indebtedness for the
26 purpose of showing that plaintiff is entitled to equitable relief as to Charles Bobb. Objected to as irrelevant and incompetent as against Martha E. Bobb, who was not a party *of* said suit.

The COURT: It strikes me that the judgment of the court fixing the amount of the indebtedness is the only thing in issue upon that point, but I will reserve the ruling until I see the records in the case; and the defendant Martha E. Bobb excepted to the refusal of the court to rule on her objection and as being a ruling against her.

Plaintiff's counsel offers in evidence the appointment of D. A. Jamison as administrator *de bonis non* of the estate of Charles Bobb, deceased, which is received in evidence without objection.

Plaintiff's counsel offers in evidence the final decree in record book No. 75, case 13809, John H. Bobb *vs.* Charles Bobb *et al.*, which is objected to as irrelevant and incompetent as against Mrs. Martha E. Bobb, she not being a party to the record.

The court overruled the objection; to which ruling of the court the defendants, by counsel, then and there duly excepted.

Said decree is as follows:

Decree, Case No. 13809.

JOHN H. BOBB
vs.
CHARLES BOBB, WILLIAM F. TAYLOR, and LUCY G. TAYLOR, His Wife; James K. Taylor and Cora S. Taylor, His Wife; George L. Bobb, John D. Stevenson, and Hannah Stevenson, His Wife; Irene Bobb, Philip M. Bobb, a Minor, Appearing by Abraham Seigel, His Guardian *ad Litem;* Charles H. Bobb, a Minor, Appearing by Abraham Seigel, His Guardian *ad Litem*, and Martrom D. Lewis, Public Administrator of the City of St. Louis, in Charge of the Estate of Charles L. Bobb, Deceased.

SATURDAY, *June 15th*, 1878.

Now, at this day, come the said parties, the said John H.
27 Bobb, plaintiff, appearing by his attorneys of record, and the said Charles Bobb, William F. Taylor, and Lucy G. Taylor, his wife; James K. Taylor and Cora S. Taylor, his wife; George L. Bobb, John D. Stevenson, and Hannah Stevenson, his wife; Irene Bobb and Martrom D. Lewis, public administrator of the city of St. Louis, in charge of the estate of Charles L. Bobb, deceased, by their attorneys of record, respectively; and the said Philip M. Bobb, by Abraham Seigel, his guardian *ad litem*, and the said Charles H. Bobb, by Abraham Seigel, his guardian *ad litem*, and upon opening of the matter this present day unto this court, by Mr. Hitchcock, of counsel for plaintiff, it was alleged that it appears by the report of Roderick E. Rombauer, Esq., heretofore appointed referee in this behalf, whose report was in part confirmed by the court, and also by the report of B. Gratz Brown, Esq., referee herein, which said last-mentioned report has been in all things confirmed by this court, that an account has been taken by said referee of all and singular the matters touching which by the former orders of this court in this cause an account was ordered to be taken, and that this cause is now ready for final hearing. It was thereupon prayed that the court do now proceed to the final hearing of this cause, and that by the final decree of this court herein the rights and interests of the said several parties in this behalf be ascertained and declared, as well in the respects of the lands and tenements mentioned and described in the deed of Hannah Letcher to Charles Bobb, as trustee, dated the 23rd day of January, in the year of our Lord 1845, being the same deed heretofore recorded in Book Q No. 3, page 240, and following, in the office of the recorder of deeds of the county of St. Louis and State of Missouri, as in respect to the sum of money for which the said Charles Bobb, defendant, by reason of the trusts in said deed declared is liable to said plaintiff and to said other parties
28 defendant respectively. Whereupon, the said cause being submitted to the court and upon inspection of the said reports of the said referee in this behalf and upon hearing of what was alleged in behalf of said several parties, plaintiff and defendants respectively, the court doth declare, adjudge, and decree that

the legal title to all and singular the said lands and tenements mentioned and described in said deed from Hannah Letcher to Charles Bobb, as trustee above mentioned, and which were vested in said Charles Bobb thereunder at the commencement of this suit, being the same lands hereinafter more particularly described, be, and the same is hereby, divested, except as hereinafter declared, out of him, the said Charles Bobb, without further act to be done by him, and that as well the legal title to said lands and tenements as the use or equitable estate therein be, and the same are hereby, vested in said John H. Bobb, Cora S. Taylor, George L. Bobb, Charles H. Bobb, Philip M. Bobb, as tenants in common thereof in fee, and that the defendant Charles Bobb is tenant in common thereof for life—that is to say, in the several interests and proportions next hereinafter mentioned, viz., as to ($\frac{5}{20}$ths) five-twentieths of said lands and tenements, in the said John H. Bobb, as tenant in fee thereof in his own right, and as to other ($\frac{5}{20}$ths) five-twentieths thereof, in the said John H. Bobb, as tenant in fee thereof, as assignee of the said defendant Lucy G. Taylor, and as to ($\frac{5}{40}$ths) five-fortieths thereof, in the defendant Philip M. Bobb, as tenant in fee thereof, as heir-at law of his father, Charles L. Bobb, deceased, formerly defendant herein, and as to other ($\frac{5}{40}$ths) five-fortieths thereof, in the defendant Charles H. Bobb, as tenant in fee, as heir-at-law of his father, the said Charles L. Bobb, and as to the remaining ($\frac{5}{20}$ths) five-twentieths of said lands and tenements, it is further ordered, adjudged, and decreed that the same be, and are hereby, vested in the said defendant Charles Bobb, as tenant thereof by the courtesy for and during his natural life, with remainder in fee, as to ($\frac{1}{5}$th) one-fifth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of said lands, in the said John H. Bobb, in his own right, and as to one other (5th) fifth of said ($\frac{5}{20}$th-) five-twentieth-, being ($\frac{1}{20}$th) one-twentieth of the said lands, in the said John H. Bobb, as assignee of Lucy G. Taylor, and as to one other (5th) fifth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of said lands, in the defendant George L. Bobb, and as to one other (5th) fifth of said ($\frac{5}{20}$th-) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of said lands, in the defendant Cora S. Taylor, and as to ($\frac{1}{10}$th) one-tenth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{40}$th) one-fortieth of said lands, in the defendant Philip M. Bobb, as heir-at-law of the said Charles L. Bobb, deceased, and as to the remaining ($\frac{1}{10}$th) one-tenth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{40}$th) one-fortieth of said lands, in the defendant Charles H. Bobb, as heir-at-law of the said Charles L. Bobb, deceased; and the court doth declare that the said lands so hereby vested in the said parties, respectively, in the said several interests and proportions above stated, are the following—that is to say, the following-described pieces, parcels, or lots of ground situated, lying, and being in the city and county of St. Louis, in the State of Missouri, viz: A lot of ground commencing at the northeast corner of Walnut and Seventh street-, containing on Walnut street seventy-four feet by one hundred and thirty-two feet deep, bounded east by property of Edward Brooks, west by Seventh street, south by Walnut street, north by an alley, and containing seventy-four feet in

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the rear, said lot being in block number one hundred and thirty-two and being part of a lot of ground conveyed by Isaac A. Letcher and wife to said Charles Bobb by deed dated the 18th day of
30 January, 1827, recorded at the recorder's office of St. Louis county, in Book S, page 219.

2nd. A lot of ground commencing at a point distant from the south side of Market street two hundred and ninety feet and from the west side of Seventh street three hundred and twenty feet, which gives the southeast corner of the lot, thence running west on the north side of Walnut street eighty feet; thence north one hundred and thirty-six feet to an alley; thence along the south side of said alley eighty feet; thence south one hundred and thirty-six feet to the point of beginning, being in block number one hundred and eighty-nine.

3rd. A lot of ground beginning one hundred and five feet west of Eighth street on Walnut street at a point being two hundred and ninety feet distant from Market street, thence westwardly forty-five feet on Walnut; thence northwardly one hundred and thirty-six feet to an alley; thence eastwardly on said alley forty-five feet; thence southwardly parallel with Eighth street one hundred and thirty-six feet to the place of beginning, said lot being in block one hundred and eighty-nine and being part of a lot of ground conveyed by Isaac H. Letcher and wife to said Charles Bobb by deed dated the 10th day of December, 1835, recorded at the aforesaid recorder's office, in Book Y, page 468 and following.

IV. A lot of ground commencing at a point two hundred and seventy feet from the west side of Seventh street and from south side of Market street one hundred and fifty-four feet, which gives the northwest corner of the lot, thence running east sixty-seven feet; thence south twenty feet; thence west and parallel with said north line sixty-seven feet; thence north on the east side of Eighth street twenty feet to the place of beginning.

31 V. A lot of ground commencing at a point of the north side of Walnut street distant one hundred and fifty-nine feet from the west side of Seventh street, thence running north and parallel with said Seventh street one hundred and thirty-six feet to an alley; thence west along on the south side of said alley forty-four feet; thence south one hundred and thirty-six feet; thence on Walnut street forty-four feet to the point of beginning, being in block number one hundred and eighty-five, they being the same pieces, parcels, or lots of ground conveyed to her, the said H. Letcher, by said Charles Bobb and wife by deed dated the eighteenth day of April, eighteen hundred and forty-three, recorded at the recorder's office of St. Louis county, in Book C No. 3, page 307 and following.

And the court doth further adjudge and decree that the respective rights and interests of the defendants George L. Bobb and Cora S. Taylor are set forth in this decree and are not other or different, and the interlocutory decree heretofore rendered as to their said rights and interests is in all things hereby confirmed.

And it is further ordered that Samuel D. Porter, heretofore ap-

pointed receiver in this cause, do forthwith make report of his proceedings as such, and that the said receiver, with and as part of said report, do file in this cause complete accounts of all moneys received and payed out by him in this behalf since the date of his last report herein, showing all moneys received and disbursed by him and on what account, and that said receiver forthwith pay and deliver into court to the credit of this cause all moneys and securities now remaining in his hands as such receiver, less a deduction therefrom of (4) four per centum upon the amounts of all moneys received by him for his commissions on rents and other sums by him
32 collected, and the additional sum of $2,577.52 (twenty-five hundred and seventy-seven and fifty-two one-hundredth dollars), such making his full compensation for his services as receiver in this behalf the sum of six hundred dollars per annum, the said parties hereto or either of them to be at liberty to file exceptions to the said report of said receiver and to the accounts to be filed or heretofore filed by him in this behalf as such.

And it is further ordered, adjudged, and decreed that of the moneys and securities heretofore collected and held by said receiver and to be paid into court by him as aforesaid the said plaintiff is entitled to (5-20ths) five-twentieths thereof in his own right and to other (5-20ths) five-twentieths thereof as assignee of Lucy G. Taylor, defendant herein, the note for ($2,000) two thousand dollars heretofore given by said Lucy G. Taylor to said receiver under the orders of this court for money loaned to her out of said fund to be received by said plaintiff at the full amount thereof on account of her interest in said fund heretofore assigned to him, and that of said moneys and securities the defendant Martrom D. Lewis, administrator of the estate of Charles L. Bobb, deceased, is entitled to other (5-20ths) five-twentieths thereof as assets of said estate, but including a part thereof, nevertheless, at the full amount thereof a certain note for $2,000, dated December 12th, 1874, hereinafter mentioned, and which was heretofore made by said Charles L. Bobb to said receiver for money loaned by said receiver to said Charles L. Bobb out of said fund under the orders of this court, the said note and unpaid interest notes therewith hereinafter mentioned to be received by said defendant Lewis at the full amount thereof as part of said assets and also including a part thereof of the sum of nine hundred and fifty-two dollars and forty-five cents ($952.45) heretofore by
33 order of this court paid out of the moneys in the hands of the receiver to him, the said Martrom D. Lewis, on account of the interest of the estate of the said Charles L. Bobb in said fund.

And it is further ordered that the remainder of the moneys to be accounted for and paid into court by said receiver as aforesaid and to which the defendant Charles Bobb would be entitled in respect of his interest as tenant by the curtesy in said lands and tenements be applied to the payment of the costs of this cause so far as the same shall be sufficient therefor, and if any portion of the said remainder of said moneys shall remain after the payment of said costs that the same be applied *pro rata* to the satisfaction of the

amounts for which, as hereinafter declared, said defendant, Charles Bobb, is liable to said plaintiff in his own right and as assignee of Lucy G. Taylor and to said defendant Lewis, as administrator of the estate of said Charles L. Bobb, deceased, in proportion to said amounts respectively; and whereas in the account heretofore taken in this cause by Roderick E. Rombauer, Esq., referee, the defendant Charles Bobb has claimed and received credit for the full amount, including all interest unpaid thereon, of a certain note for ($27,500) twenty-seven thousand five hundred dollars heretofore made by the plaintiff John H. Bobb and delivered to said defendant, Charles Bobb, for moneys advanced by him, the said defendant, to the said plaintiff on the faith and credit of the trust estate, which note bears date October 29th, A. D. 1864, and is filed as an exhibit in this cause, it is therefore ordered, adjudged, and decreed that the said note has been fully paid and satisfied, and that the same be delivered up by the clerk of this court to the said plaintiff for cancellation;

34 and whereas in the said account taken before the said referee said defendant, Charles Bobb, also claimed and received credit for the full amount of certain other note made by the defendant Lucy G. Taylor bearing date the 15th day of March, A. D. 1866, for the sum of ($4,000) four thousand dollars, and also claimed and received credit for the full amount of four other notes made by said Lucy G. Taylor and William F. Taylor, all dated February 3rd, 1869, one of said notes being for the sum of ($5,000) five thousand dollars and the three remaining notes for the sum of ($250) two hundred and fifty dollars each, all which said notes are filed as exhibits in this cause. It is therefore ordered, adjudged, and decreed that as well the said note for $4,000 as the said note for $5,000 and the said three notes each for $250 made by the said Lucy G. Taylor and William F. Taylor, as aforesaid, are fully satisfied, and that the said notes and each of them be delivered by the clerk of this court to the said Lucy G. Taylor and William F. Taylor for cancellation; and whereas the said note for ($5,000) five thousand dollars and said three notes for ($250.00) two hundred and fifty dollars each, above mentioned, were secured by a certain deed of trust, also dated the 3rd day of February, A. D. 1869, made by said Lucy G. Taylor and her husband, William F. Taylor, and Charles Bobb, as trustee, and recorded in Book 372, at page 367 thereof, in the office of said recorder of deeds, in which said deed William C. Jamison was made trustee. It is further declared, adjudged, and decreed that the said deed of trust be, and the same is hereby, satisfied and the lien thereof released without further act to be done by any party thereto; and whereas it further appears from the said report of said Roderick E. Rombauer, referee herein, that in the said account before him taken said defendant, Charles Bobb, also

35 claimed and received credit as against Charles L. Bobb, heretofore a defendant herein, now deceased, for the full amount, including all interest unpaid thereon, of a certain note made by said Charles L. Bobb dated the 20th day of August, A. D. 1869, payable one year after date, for the sum of ($10,846) ten thousand eight hundred and forty-six dollars, which said note is now on file

as an exhibit in this cause. It is therefore ordered, adjudged, and decreed that the said note last mentioned is fully satisfied and paid and that the said note be delivered by the clerk of this court to the defendant Martrom D. Lewis, administrator as aforesaid, for cancellation; and whereas heretofore, pursuant to the orders of this court, the said Samuel D. Porter, receiver in this behalf, loaned to said Charles L. Bobb, formerly a defendant herein, the sum of ($2,000) two thousand dollars out of the trust fund held by said receiver, for which sum said Charles L. Bobb executed and delivered to said receiver his certain notes, being one principal note for ($2,000) two thousand dollars and dated December 12th, A. D. 1874, payable three years after date, together with six interest notes, each for ($100) one hundred dollars, all of the date last aforesaid and payable respectively in six, twelve, eighteen, twenty-four, thirty, and thirty-six months after date, all of said notes bearing interest after maturity at (10) ten per cent. per annum; of which notes the said principal note for ($2,000) two thousand dollars and said (4) four interest notes last maturing now remain unpaid in the hands of said receiver. It is therefore ordered, adjudged, and decreed that upon delivery of said notes into court by said receiver, as hereinbefore ordered, the said last-mentioned principal note and interest notes unpaid be delivered to and received by
36 Martrom D. Lewis, as administrator of the estate of said Charles L. Bobb, at the full amount thereof, on account of the interest of said estate in the trust fund held by said receiver, as hereinafter provided for, and that the receiver do cause the deed of trust upon the property of the said Charles L. Bobb, securing the said loan to be properly released of record. And it appearing to the court in respect to the trust e-tate heretofore vested in the said defendant, Charles Bobb, of and in the said lands described in said deed from Hannah Letcher to Charles Bobb, as trustee, dated January 23rd, 1845, and in respect of the rents, issues, and profits of said estate and of the proceeds of lands sold by said Charles Bobb, as trustee, and also in respect of the shares of said plaintiff, John H. Bobb, and said defendant, Charles L. Bobb, deceased, in the moneys received by said trustee upon certain notes of John J. Anderson and John Kelley and Sands E. Selleck in the petition described and also in respect of the services rendered in that behalf by said defendant, Charles Bobb, as trustee; that upon the accounting which has been had and taken in this cause under the orders of this court, between the said Charles Bobb, as trustee, and the beneficiaries under said trust after charging the said Charles Bobb, as such trustee, with all the rents, issues, and profits of said trust estate, with which he is properly chargeable, and with the proceeds of lands sold by him after January 23rd, 1845, and with the proceeds of said notes made by said Anderson, Kelley, and Selleck, and after crediting him, the said Charles Bobb, with all moneys paid, laid out, and expended for taxes, general and special, and for
37 repairs done on said premises and for improvements on said premises between the dates specified in the order of reference made by this court in this behalf on the 4th day of November, A. D.

1871, and for all lawful charges and expenses incurred by him in the management and care of said property, and also after crediting him, the said Charles Bobb, as tenant by the curtesy, with (¼) one-fourth of the rents, issues, and profits of said trust estate from the 18th day of May, 1853, less such moneys or proportion of moneys laid out and expended for taxes, repairs, and improvements and lawful charges and expenses incurred in the management of said property, as were expended by him as such tenant or which were properly chargeable against him as tenant for life of (¼) one-fourth of said estate, and also after crediting him, the said Charles Bobb, as trustee, with all such sums as are found to have been paid or advanced by him, said trustee to the said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor, on the faith and credit of said trust estate, and after crediting him, said Charles Bobb, as trustee, with a just and reasonable compensation for his services as such trustee in and about the care and management of said trust estate from and after the 23rd day of January, 1845, down to the 8th day of February, 1870, at which last-mentioned date the custody of said trust estate was placed in the hands of Samuel D. Porter, as receiver, under the orders of this court, the said defendant, Charles Bobb, as trustee of said beneficiaries, respectively, is liable to the plaintiff, John H. Bobb, and to the defendant Charles L. Bobb or his legal representatives, and the defendant Lucy G. Taylor or her assigns, for certain balances in money appearing by the said account to have been chargeable to him, said Charles Bobb, as such trustee, on account of money received by him from or on account of said estate from time to time. And it further appearing that said balances were used by said trustee from time to time for his own profit by loaning the same at interest at a high rate per annum and upwards and by otherwise employing the same for
38 his individual benefit without accounting for the same nor for any of the profits so realized by him therefrom; it is therefore declared, adjudged, and decreed that said defendant, Charles Bobb, is accountable to said beneficiaries for all balances so remaining in his hands, together with interest thereon at the rate of six per centum per annum, computed with annual rests, and the court doth order and decree and adjudge that by reason of the premises said defendant, Charles Bobb, is liable to said plaintiff, John H. Bobb, in his own right as such beneficiary for, and that such plaintiff recover of said defendant, Charles Bobb, the sum of ($27,538.83) twenty-seven thousand five hundred and thirty-eight dollars and eighty-three cents, the same to bear interest until paid at the rate of six per centum per annum; and the court doth further order, adjudge, and decree that said defendant, Charles Bobb, is liable to the representatives of Charles L. Bobb, deceased, for, and that the defendant Martrom D. Lewis, administrator of the estate of said Charles L. Bobb, do recover from said defendant, Charles Bobb, the sum of (18,382.59) eighteen thousand three hundred and eighty-two dollars and fifty-nine cents, the same to bear interest until paid at the rate of six per centum per annum; and the court doth further order, adjudge,and decree that said defendant, Charles Bobb, is

liable to the defendant Lucy G. Taylor or her assigns in respect of her interest as beneficiary under said trust in the sum of ($36,263.83) thirty-six thousand two hundred and sixty-three dollars and eighty-three cents; and it appearing to the court that the plaintiff John H. Bobb hath since the institution of this suit, by due assignment and conveyance thereof, become the assignee of all and singular the right, interest, claim, and demand of her, the said Lucy G. Taylor, and of the defendant William F. Taylor, if any, of, in, and to the said trust property and all demands arising therefrom or in
39 respect thereof against said defendant, Charles Bobb; it is ordered, adjudged, and decreed that the said John H. Bobb also recover of the said defendant, Charles Bobb, the further sum of ($36,262.83) thirty-six thousand two hundred and sixty-three dollars and eighty-three cents, the same to bear interest at the rate of six per centum per annum until paid; and it is further ordered, adjudged, and decreed that the costs of this suit and all proceedings therein be taxed against the said defendant, Charles Bobb, and that the said plaintiff John H. Bobb and the said defendants herein other than said Charles Bobb do recover of him, said Charles Bobb, all costs herein by them respectively laid out and expended, and that execution issue therefor accordingly; and it is further ordered, adjudged, and decreed that in and as part of the costs to be taxed against said defendant, Charles Bobb, in this cause all costs heretofore paid by said Samuel D. Porter as receiver in this behalf under the orders of this court be included, and that said costs last mentioned be taxed against said Charles Bobb in favor of said plaintiff and the defendant Martrom D. Lewis in the following proportions—that is to say, ($\frac{2}{3}$) two-thirds thereof in favor of said plaintiff, John H. Bobb, and ($\frac{1}{3}$) one-third thereof in favor of said defendant, Martrom D. Lewis, as administrator of the estate of Charles L. Bobb, deceased, and that they respectively have execution therefor; but execution is to issue for only so much of the costs so to be taxed against said Charles Bobb as shall not have been paid and satisfied by such portion of the moneys ordered to be paid into court by the receiver as hereinbefore ordered to be applied in satisfaction thereof; and it is further ordered by the court that the said receiver, Samuel B. Porter, do further make and file a supplementary and final report of his further proceedings as receiver from the 27th day of May, 1878,
down to and including the date of entry of this decree; that
40 he do pay over all sums of money received by him as such receiver to the last-named time, and the court doth now appoint William J. Berkley as temporary receiver in this cause and until the further order of this court, at a compensation for all services whatsoever rendered or to be rendered by him of four per cent. of the amount of rents which may be collected by him, and which sum is to be full compensation for his said services; and it is ordered that the said receiver do execute a bond with sureties in the sum of six thousand dollars, to be approved by the court, conditioned for the faithful performance of his duties as such receiver, and that the said receiver do forthwith take possession of said property and collect the rents thereof; and the court doth order that the said Samuel

D. Porter do give to the said William J. Berkley full information as to the tenants of said property, the amount of rent payable by them and how payable, and amounts of rent, if any, due by them and still payable, and all other necessary information to enable him, the said William J. Berkley, temporary receiver as aforesaid, to properly enter upon the performance of his said duties as aforesaid, and all other questions arising upon the foot of this decree are reserved until the further order of the court; and it is further ordered that executions issue in accordance with this decree.

41 Plaintiff's counsel next offers in evidence the execution issued on said judgement for the purpose of showing that it has not been satisfied and that there is a return of *nulla bona*.

Objected to by Mrs. Martha E. Bobb as being irrelevant and incompetent, the presumption being that the decree is not satisfied, and the only possible relevancy that the return *nulla bona* would have would be to show that Mr. Bobb was insolvent after a certain period—that is, the return of an officer in a case in which Mrs. Bobb is not a party, and therefore is not conclusive upon her; that it is not relevant and is wholly immaterial whether Mr. Bobb was insolvent at the date of this decree, the question being, under the ruling of the court as to the sufficiency of the petition, whether he was insolvent at the date when the conveyance was made to Letcher, in which Mrs. Bobb became the owner of these notes.

Mr. ROWE: I propose to offer execution No. 283, October term, 1878, John H. Bobb *vs.* Charles Bobb, issued in case No. 13809, John H. Bobb being plaintiff and Charles Bobb, William F. Taylor, Lucy G. Taylor, his wife; James K. Taylor and Cora S. Taylor, his wife; George L. Bobb, John B. Stevenson and Hanna Stevenson, his wife; Irene Bobb, Philip M. Bobb, a minor, appearing by Abraham Seigel, his guardian *ad litem;* Charles H. Bobb, a minor, appearing by Abraham Seigel, his guardian *ad litem*, and Martrom D. Lewis, administrator, of the city of St. Louis, in charge of the estate of Charles L. Bobb, deceased, are defendants.

Defendants' counsel renews the objection on behalf of Martha E. Bobb; which objection is overruled; to which ruling of the court the defendants, by counsel, then and there duly excepted.

Said execution is as follows:

Execution No. 283, *Oct. T.*, 1878.

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

42 Whereas on the 15th day of June, A. D. 1878, at our circuit court, before one of the judges thereof, in a certain cause wherein John H. Bobb is plaintiff and Charles Bobb, William F. Taylor, Lucy G. Taylor, his wife; James K. Taylor and Cora S. Taylor, his wife; George L. Bobb, John D. Stevenson and Hannah Stevenson, his wife; Irene Bobb, Philip M. Bobb, a minor, appearing by Abraham Siegel, his guardian *ad litem;* Charles H. Bobb, a minor, appearing by Abraham Siegel, his guardian *ad litem*, and Martrom D.

Lewis, public administrator of the city of St. Louis, in charge of the estate of Charles L. Bobb, deceased, are defendants, it was ordered, adjudged, and decreed that said defendant, Charles Bobb, is liable to the representatives of Charles L. Bobb, deceased, for, and that the defendant Martrom D. Lewis, administrator of the estate of said Charles L. Bobb, do recover from said defendant, Charles Bobb, the sum of eighteen thousand three hundred and eighty-two dollars and fifty-nine cents; and it is further ordered, adjudged, and decreed that the costs of this suit and all proceedings therein be taxed against the defendant Charles Bobb; and it is further ordered, adjudged, and decreed that in and as part of the costs to be taxed against said defendant Charles Bobb, in this cause all costs heretofore paid by Samuel D. Porter, as receiver in this behalf under the orders of this court, be included, and that said costs last mentioned be taxed against said Charles Bobb in favor of said plaintiff and the defendant Martrom D. Lewis in the following proportions—that is to say, ($\frac{2}{3}$) two-thirds thereof in favor of said plaintiff, John H. Bobb, and ($\frac{1}{3}$) one-third thereof in favor of said defendant, Martrom D. Lewis, as administrator of the estate of Charles L. Bobb, deceased, and that they respectively have
43 execution therefor, these are therefore to command you that of the goods and chattles and real estate of the said Charles Bobb you cause to be made said sum of eighteen thousand three hundred and eighty-two dollars and fifty-nine cents, and also the sum of two thousand nine hundred and three dollars and fifty-nine cents costs, being the ($\frac{1}{3}$) one-third of amount of moneys paid by said receiver under order of this court, and that you have the same before the judges of said court on the first Monday of October next to satisfy the said judgment and costs aforesaid, and that you certify how you have executed this writ.

Witness Philip Stock, clerk of our said court, with the seal
[SEAL.] thereof hereunto affixed, at office, in the city of St. Louis, this 6th day of July, in the year of our Lord eighteen hundred seventy-eight.

PHILIP STOCK, *Clerk.*

Nulla Bona Return.

No goods, chattles, or real estate belonging to the within-named defendant found in the city of St. Louis whereon to levy this writ and make the within debt and costs or any part thereof.

JOHN FINN, *Sheriff,*
By JOS. GREENWALT, *Deputy.*

N. B., 50c.
St. Louis, Oct. 7th, 1878.

Plaintiff's counsel offers in evidence the report of the referee, Rombauer, in case No. 13809, and also report of Referee Brown in same case. These are objected to by defendant- as incompetent and the objection sustained by the court. Plaintiff's counsel offers in evidence deed from John W. Bird and wife, by trustee, to Henry C.

Baggot, dated February 6th, 1879, acknowledged February 7th, 1879, recorded February 28th, 1882, in Book 672, page 137, the consideration recited being $4,000.00. Objected to as irrelevant and incompetent as against Mrs. Martha E. Bobb under the allegations of the petition. The court overruled the objection; to which ruling of the court the defendants, and especially defendant
44 Mrs. Martha E. Bobb, by their counsel, then and there severally and duly excepted. Said deed is as follows:

John W. Burd and Wife, by Tr., to H. C. Bagot.

This deed made and entered into this sixth (6th) day of February, A. D. eighteen hundred and seventy-nine 1879 by and between William C. Jamison surviving trustee party of the first part and Henry C. Bagot, party of the second part, witnesseth,

That whereas John W. Burd and Eliza A. Burd his wife, by deed dated the 23rd day of September, 1865 recorded in the office of the recorder of deeds for the county (now city) of St. Louis State of Missouri in Book 304 p. 484 conveyed the property hereinafter described in trust to said William C. Jamison and William T. Selby, to secure the payment of certain promissory notes in said deed described and whereas the principal note remained due and unpaid and whereas William T. Selby has departed this life (being one of the trustees aforesaid) and the party herein of the first part, at the request of the legal holder of said note acting in pursuance of the provisions of said deed of trust and having first given twenty days, public notice of the time terms and place of sale and of the property to be sold by an advertisement inserted on the sixteenth day of January A. D. 1879 in the St. Louis Times Journal, a daily newspaper printed in the city of St. Louis and continued to the day of sale (as will appear by the copy of said advertisement and affidavit of publication thereof hereto annexed as a part of this deed) did proceed to sell the property hereafter described at public vendue to the highest — for cash at the east front door of the court-house in the city of St. Louis on Thursday, the sixth (6th) day of February, 1879, between the hours of ten o'clock in the morning and four o'clock in the afternoon of said day, when and where the same was struck off and sold to Henry C. Bagot as the highest and last
45 bidder thereof at the price and sum of four thousand ($4,000.00) dollars, full payment whereof is hereby acknowledged. Now said party of the first part by virtue of the proceedings aforesaid and in consideration of the sum of four thousand dollars to him in hand paid by the said party of the second part, does by these presents, bargain, sell and convey to said Henry C. Bagot, all the right, title and interest (which by virtue of said trust deed and the proceedings aforesaid he may or can bargain, convey or sell) in and to the property hereinafter described, to wit; the following-described real estate situated in the county (now city) — St. Louis and State of Missouri on Goodfellow avenue, and being a portion and the balance of the real estate conveyed by David F. Goodfellow and wife to said John W. Burd by deed dated May 2nd 1853, recorded in the

recorder's office of St. Louis county (now city) in Book No. 6 page 505, to wit; a certain piece of land containing twenty-six $\frac{92}{100}$ acres together with the improvements thereon in United States survey No. 2976, and bounded west by Goodfellow avenue, south by land conveyed by said John W. Burd and wife to Elizabeth M. Rucker by deed dated May 1, 1860, and recorded in the said office in Book 245, page 256, east by land formerly of John Goodfellow and north by land of the estate of Charles Semple and this piece of land hereinafter described, and 2nd; a certain piece of land containing two acres and $\frac{26}{100}$ *hundredths* of an acre in United States survey No. 1913, beginning at a point in the north line of survey No. 2976, which is the south line of U. S. survey No. 1913, where the eastern line of Goodfellow avenue intersects said north line of survey 2976, thence N. 15° 45′ E. with the east line of said avenue, four chains and twenty links to the school-house lot so called; thence eastwardly or S. 60° 15′ E. parallel with said north line of survey 2976 six chains seventy links to a roadway 50 links wide, thence S. 29° 15′ W. with said roadway four chaines eight links to said north line of survey 2976, thence with said north line of survey No. 2976
46 four chains seventy-three links to the place of beginning.
To have and to hold the said described premises unto said Henry C. Bagot and to his heirs and assigns forever.

In witness whereof the said party hereto has hereunto set his hand and seal the day and year first above written.

WILLIAM C. JAMISON, *Trustee.* [SEAL.]

STATE OF MISSOURI, }
City & County of St. Louis, } ss:

Be it remembered that on this seventh day of February, A. D. 1879, before me, the undersigned, Dorsey A. Jamison, a notary public in and for the State, city, and county aforesaid, who was qualified as notary public on the thirteenth day of June, 1875, and whose term and commission expire on the eighteenth day of June, 1881, came William C. Jamison, who is to me personally known to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the purpose herein mentioned.

In testimony whereof I have hereunto set my hand and
[SEAL.] official seal, at my office, in the city of St. Louis, Mo., this seventh day of February, 1879.

DORSEY A. JAMISON,
Notary Public, St. Louis City & Co., Mo.

Trustee Sale.

Whereas John W. Burd and Eliza A. Burd, his wife, by their certain deed of trust, dated September 23rd, 1865, recorded in the recorder's office of the then county (now city) of St. Louis, Mo., in Book 304, page 484, conveyed to Wm. T. Selby and the undersigned the following-described real estate, situated in the city of St. Louis, State of Missouri, to wit: First, a tract containing 26.92 acres, to-

gether with the improvements thereon in United States survey No. 2976, and bounded on the west by Goodfellow avenue, south by land conveyed by said Burd and wife to Elizabeth M. Rucker May 1, 1860, of record in Book 248, page 256, of said recorder's office, east by land formerly of John Goodfellow, and on the north by land of the estate of Charles Semple and the tract next herein described; second, a tract of two and $\frac{25}{100}$ acres in United States survey No. 1913, to wit: Beginning at a point on the north line of said survey No. 2976 where the eastern line of Goodfellow — intersects said north line of survey No. 2976, thence north 15° 45′ east with the east line of said avenue four chains and twenty links to the school-house lot, thence eastwardly 60° 15′ E. parallel to said north line of survey No. 2976 six chains and seventeen links to a roadway fifty links wide, thence south 29° 15′ W. with said roadway four chains eight links to said north line of said survey 2976, thence with said north line of said survey 2976 four chains seventy-three links to the place of beginning; which conveyance was made in trust to secure the payment of certain notes described in said deed; and whereas the principal note remains due and unpaid, now, therefore, at the request of the legal holder of said note and in pursuance of the provisions of said deed, the undersigned surviving trustee will offer said property for sale at public auction for cash to the highest bidder at the east front door of the court-house in the city of St. Louis, on Thursday, the 6th day of February, 1879, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of that day, for the purpose mentioned in said deed of trust.

WILLIAM C. JAMISON,
Surveying Trustee.

St. Louis, January 16.

STATE OF MISSOURI, } ss:
City St. Louis, }

Personally appeared before the undersigned (notary public within and for the city of St. Louis) B. M. Chambers, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the St. Louis Times Journal, printed within the said city and State, the newspaper of which he is the publisher, for twenty-two times, the first insertion being on the 16th day of January, 1879, and the last insertion on the 6th day of February, 1879, as follows:

1st time, January 16th.	8th time, 23rd.	15th time, 30th.
2nd time, " 17th.	9th time, 24th.	16th time, 31st.
3rd time, " 18.	10th time, 25th.	17th time, Feb'y 1st.
4th time, " 19.	11th time, 26th.	18th time, " 2nd.
5th time, " 20.	12th time, 27th.	19th time, " 3rd.
6th time, " 21.	13th time, 28th.	20th time, " 4th.
7th time, " 22.	14th time, 29th.	21st time, " 5th.
		22d time, " 6th.

Printer's fee.....	$41 70
Affidavit.....	50c.
	$42 20

[SEAL.] Sworn to and subscribed before me this 6th day of February, 1879.

JOHN W. ALLEN,
Notary Public.

Qualified Aug. 10, 1877; term expires Aug. 3, 1881.

Filed and recorded February 28th, 1882, a- 9.30 a. m.
C. W. IRWIN, *Recorder.*

NOTE.—The name and words "William" on line 4, "together with" on line 24, page 138 of this record, are written on erasures; "four" on line 13 and "city" on line 41, same page, are interlined in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

49 I, the undersigned recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by John W. Burd and wife by tr. to Henry C. Bagot, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office in Book 672, page 137.

[SEAL.] Witness my hand and official seal this 27th day of Oct., 1887.

WM. A. HOBBS, *Recorder.*

Plaintiff's counsel next offers in evidence deed from Henry C. Bagot to John Letcher, dated and acknowledged July 19th, 1879, recorded February 28th, 1882, in Book 665, page 542, being a warranty deed for a consideration of ten thousand dollars.

Objected to on the part of Mrs. Bobb as being as to her irrelevant and incompetent.

The court overrules the objection; to which ruling of the court the defendants, by their counsel, then and there severally and duly excepted.

The deed is as follows:

Deed of H. C. Bagot to John Letcher.

This deed made and entered into this nineteenth day of July eighteen hundred and seventy-nine by and between Henry C. Bagot of the city of St. Louis Missouri, party of the first part and John Letcher of —— party of the second part witnesseth:

That the said party of the first part for and in consideration of ten thousand dollars to them paid by the said party of the second part the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell convey and confirm unto the said party of the second part the following described tract or parcel of land situated in the county (now city) of St. Louis and State of Missouri on Goodfellow avenue and being a portion & the balance of the real

estate conveyed by David F. Goodfellow and wife to John W. Burd by deed dated May 2nd 1853 and recorded in the recorder's office
50 of St. Louis county (now city) in Book No. 6 page 505 to wit:

1st. A certain piece of land containing twenty-six $\frac{92}{100}$ acres, together with the improvements thereon in United States survey No. 2976 and bounded west by Goodfellow avenue, south by land conveyed by John W. Burd and wife to Elizabeth M. Rucker by deed dated May 1st 1860 & recorded in the said office in Book 245 page 256, east by land formerly of John Goodfellow and north by land of the estate of Charles Semple and this piece of land hereinafter described.

2nd. A certain piece of land containing two acres & $\frac{26}{100}$ of an acre in United States survey No. 1913, beginning at a point in the north line of survey No. 2976 which is the south line of U. S. survey No. 1913 where the eastern line of Goodfellow avenue intersects said north line of survey 2976 thence north 15° 45′ E. with the east line of said avenue four chains and twenty links to the shool-house lot so called thence eastwardly or S. 60° 15′ E. parallel with said north line of survey 2976 six chains seventeen links to a roadway 50 links wide thence S. 29° 15′ W. with said roadway four chains eight links to said north line of survey 2976 thence with said north line of survey 2976 four chains seventy-three links to the place of beginning. To have and to hold the same together with all the rights immunities privileges and appurtenances to the same belonging unto the said party of the second part and to his heirs and assigns forever; the said Henry C. Bagot hereby covenanting that his heirs executors and administrators shall and will warrant and defend the title to the premises unto the said party of the second part and to his heirs and assigns forever against the lawful claims of all persons whomsoever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY C. BAGOT. [SEAL.]

51 Witness:
WM. H. CARRELL.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that on this nineteenth day of July A. D. eighteen hundred and seventy-nine, before me, the undersigned, a notary public within and for the city and State aforesaid, qualified March 15th, 1879, commission expiring Feb'y 25th, 1883, came Henry C. Bagot, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto and he acknowledged the same to be his act and deed for the purposes therein mentioned.

[SEAL.] In witness whereof I have hereunto set my hand and notarial seal, at office, the day and year first above written.

L. A. McGINNIS,
Notary Public, City of St. Louis, Mo.

Filed and recorded February 28th, 1882, a- 9.30 a. m.
C. W. IRWIN, *Recorder.*

NOTE.—Part of the word "city," twice on line 35, page 542 of this record, is written over another word in the original deed.

STATE OF MISSOURI, }
City of St. Louis. }

I, the undersigned recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by Henry C. Bagot to John Letcher, together with the acknowledgments and date of filing and recording thereof, as the same remains on record in my office in Book 665, page 542.

[SEAL.] Witness my hand and official seal this 27th day of October, 1887.

WM. A. HOBBS, *Recorder.*

52 Plaintiff's counsel next offers in evidence deed from John W. Bird and wife to William F. Selby and William C. Jamison, trustees John S. Mellen, dated September 23d, 1865, to secure a principal note of $8,000.00 and interest notes.

Objected to as irrelevant and incompetent on the ground that no cause of action is stated against Mrs. Bobb.

The court overrules the objection; to which ruling of the court the defendants, by their counsel, then and there severally and duly excepted.

Said deed is recorded in Book 304, page 484, and is as follows:

Deed of John W. Burd and Wife to Wm. Selby, Trustee of John S. Miller.

This deed made and entered into this twenty-third day of September eighteen hundred and sixty-five by and between John W. Burd and Eliza A. Burd his wife of St. Louis in the State of Missouri parties of the first part, William T. Selby and William C. Jamison of the same place parties of the second and John S. Miller of the same place party of the third part; witnesseth;

That the said parties of the first part in consideration of the debt and trust hereinafter mentioned and created and the sum of one dollar to them paid by the said party of the second part the receipt of which is hereby acknowledged do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part the following described real estate situated in the county of St. Louis and State of Missouri on Goodfellow avenue about six miles northwest from the city of St. Louis and being a portion of the balance of the real estate conveyed by David F. Goodfellow and wife to said John W. Burd by deed dated May 2nd 1853 and recorded in the recorder's office of St. Louis county in Book N No. 6 page 505 to wit: A certain piece of land containing twenty-six $\frac{92}{100}$ acres on which now stands the dwelling-house and other improve-

ments occupid by said John W. Burd in United States sur-
53 vey No. 2976 and bounded west by Goodfellow avenue, south by land conveyed by said parties of the first part to Elizabeth M. Rucker by deed dated May 1st 1860 and recorded in said office in Book 245 page 256, east by land formerly of John Goodfellow and north by land of the estate of Charles Semple and this piece of land hereinafter described; and

2nd. A certain piece of land containing two acres and $\frac{2}{10}\frac{4}{0}$ of an acre in United States survey No. 1913, beginning at a point in the north line of survey No. 2976, which is the south line of U. S. survey No. 1913 where the eastern line of Goodfellow avenue intersects said north line of survey 2976, thence N. 15° 45′ E. with the east line of said avenue four chains and twenty links to the school-house lot so called, thence eastwardly at S. 60° 15′ E. parallel with said north line of survey 2976, six chains seventeen links to a roadway 50 links wide, thence S. 29° 15′ W. with said roadway four chains eight links to said north line of survey 2976, thence with said north line of survey No. 2976 four chains seventy-three links to the place of beginning. To have and to hold the same together with the appurtenances to the said parties of the second part and to the survivor of them and to the legal representative of such survivor forever; in trust, however, for the following purpose: Whereas, the said John W. Burd has executed his certain eleven negotiable promissory notes, all bearing even date herewith, payable to the order of the said party of the third part at the Bank of the State of Missouri, with interest after maturity at the rate of ten per cent. per annum, one of said notes being for eight thousand dollars due at five years after date, and other ten notes all, each for three hundred and twenty dollars, one due at six months, one due at
one year, one due at eighteen months, one due at two years,
54 one due at thirty months, one due at three years, and one due at forty-two months. one due at four years, one due at fifty-four months and other due at five years after date. And whereas, for the purpose of better securing said indebtedness said John W. Burd covenants and agrees with said party of the third part and his assigns, that said property is now clear and free from all general and special taxes, that the same have always been and hereafter shall be promptly paid, or in case there should be any taxes now in arear, or in case there shall be any default in the punctual payment of the same at any time hereafter, the said party of the third part or his assigns at his option may pay the same or redeem said property, and all amounts so expended shall become a debt due additional to the indebtedness aforesaid and secured in like manner by this deed of trust. And for better securing the payment of said notes the said John W. Burd covenants and agrees as aforesaid that he will insure the improvements on said real estate in some good and solvent insurance company to at least five thousand dollars, and will assign the policy of insurance to said parties of the second part as collateral security as aforesaid, and will keep the said improvements insured, as aforesaid and said policy assigned as aforesaid, until said notes are paid as aforesaid. And if said

John W. Burd fails to pay said taxes and insurance as aforesaid, then the holder of said notes may pay the same or any part thereof, all amounts thus expended, taxes and insurance as aforesaid, shall be secured by this deed of trust in the same manner and like effect, as said notes are secured. Now if said promissory notes shall be punctually paid at maturity, and if the covenant aforesaid shall be well and truly kept and all amounts expended as aforesaid,
55 shall be refunded and repaid to said party of the third part, or his assigns by said John W. Burd or his legal representatives, then the property hereinbefore conveyed shall be released at the cost of the said parties of the first part, but if said promissory notes or any of them or any part thereof, shall be allowed to remain due and unpaid, or in case payment of an amount expended as aforesaid, should not be made or in case said covenant or any part thereof, shall not be fully kept then this deed shall remain in full force, and the said parties of the second part or either of them or the survivor of them or the legal representatives of such survivor may proceed to sell the property hereinbefore described or any part thereof, at public vendue to the highest bidder at the court-house in the city of St. Louis, for cash, first giving twenty days public notice of the time terms and place of said sale and of the property to be sold by advertisement in some newspaper printed and published in the city of St. Louis and upon such sale shall execute and deliver a deed or deeds in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of sale out of which shall be paid first, the costs and expenses of executing this trust including compensation to the trustee for their services, and next the amount expended for taxes and insurance as aforesaid and interest thereon at the rate of ten per cent. per annum and next the amount remaining unpaid on said notes; and the remainder, if any, shall be paid to the said John W. Burd or his legal representatives. And the said parties of the second part covenant faithfully to perform and fulfill the trust herein created.

In testimony whereof, the parties have hereunto set their hands and seals the day and year aforesaid.

56 JOHN W. BURD. [SEAL.]
ELIZA A. BURD. [SEAL.]
WM. T. SELBY. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this the 23rd day of September, eighteen hundred and sixty-five, before me, the undersigned, notary public, duly commissioned and qualified, for and within the county aforesaid, personally came Jno. W. Burd and Eliza A. Burd, his wife, who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties -hereto, and they acknowledged the same to be their act and deed for the purpose therein mentioned. She, the said Eliza A. Burd, having been by me first made acquainted with the contents of said instrument of writing, on examination apart from her said hus-

band, acknowledged that she executed the same and relinquis-es her dower in the real estate therein mentioned and conveyed freely and without compulsion or undue influence of her husband.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my official seal the day and year last above written.

THOS. T. SMITH,
Notary Public.

Filed and recorded September 28th, 1865.
A. C. BERNARDY, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by John W. Burd and wife to John S. Miller's tr's, 57 together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book 304, page 484.

Witness my hand and official seal this 27th day of [SEAL.] September, A. D. 1887.

WM. A. HOBBS, *Recorder.*

Plaintiff's counsel also offers in evidence deed from John Letcher and wife to Martha E. Bobb, dated May 1st, 1881, acknowledged May 17th, 1881, recorded March 16th, 1882, being quitclaim deed for a consideration of one dollar, recorded in Book 677, page 18.

Objected to on the grounds before stated, viz., that no cause of action for fraud was stated against Mrs. Bobb.

Objection overruled and defendant severally and duly excepted to the ruling.

Said deed is as follows:

Deed of John Letcher and Wife to Martha E. Bobb.

This indenture made on the first day of May A. D. one thousand eight hundred and eighty-one by and between John Letcher and Cornelia Letcher his wife of the county of St. Louis and State of Missouri parties of the first part and Martha E. Bobb of the county of St. Louis and State of Missouri party of the second part; witnesseth; that the said parties of the first part in consideration of the sum of one dollar to them paid by the said party of the second part the receipt of which is hereby acknowledged does by these presents remise release and forever quitclaim unto the said party of the second part the following-described lots tracts or parcels of land lying being and situate in the city of St. Louis and State of Missouri to wit; First; a tract of land containing twenty-six and $\frac{92}{100}$ acres together with the improvements thereon in United States survey No. 2976 and bounded on the west by Goodfellow avenue south by land conveyed by John W. Burd and wife to Elizabeth Rucker May 1st

1860 recorded on page 256 Book 248 in St. Louis city recorder's
58 office, east by land formerly of John Goodfellow and north by the land of the estate of Charles Semple and the tract next herein described. Seckond; a tract of land containing two and $\frac{26}{100}$ acres of land in United States survey No. 1913 and bounded as follows: Beginning at a point in the north line of U. S. survey No. 2976 where the north line of said survey is intersected by Goodfellow Ave.'s eastern line thence north 15° 45′ with the east line of said avenne four chains and twenty links thence eastwardly 60° 15′ E. parellel to said north line of survey No. 2976 six chains and 17 links thence south 29° 15′ W. four chains and eight links to said north line of survey 2976 four chains and seventy-three links to the place of beginning; it being the same property acquired by John Letcher from Henry C. Bagot by deed dated July the nineteenth 1879 to have and to hold the same with all the rights immunities privileges and appurtenances thereto belonging unto the party of the second part and her heirs and assigns forever so that neither the said parties of the first part nor their heirs nor any other person or persons for them or in their names or behalf shall or will hereafter claim or demand any right or title to the aforesaid premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN LETCHER. [SEAL.]
CORNELIUS LETCHER. [SEAL.]

Signed sealed and delivered in presence of us

——— ———.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

59 Be it remember- that on this 17th day of May, A. D. 1881, before the undersigned, a notary public within and for the city of St. Louis and State of Missouri, personally came John Letcher and Cornelia Letcher, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Cornelia Letcher, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband, acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereto set my hand and affixed my official seal, at my office, in St. Louis, the day and year
[SEAL.] first above written. My term of office as a notary public will expire February 25th, 1883.

L. A. McGINNIS,
Notary Public, City of St. Louis, Mo.

Filed March 16th, 1882, at 9.38 a. m.

C. W. IRWIN, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by John Letcher and wife to Martha E. Bobb, together with the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book 677, page 18.

[SEAL.] Witness my hand and official seal this twenty-seventh day of October, A. D. 1887.

WM. A. HOBBS, *Recorder.*

Testimony of H. C. Bagot.

Plaintiff's counsel then called HENRY C. BAGOT, who, being duly sworn, testified as follows:

—. What is your name?

60 A. Henry C. Bagot.

Q. What is your business, Mr. Bagot?

A. I am in the post office.

Q. How long have you been in the post office?

A. About fourteen or fifteen years.

Q. How old are you?

A. I am nearly 35.

Q. Do you know this tract of land containing 26 and $\frac{93}{100}$ acres in United States survey 2972, known as the Burd place, on Goodfellow avenue?

A. I don't know anything about it, sir. I have heard of it. I don't know anything about it.

Q. Do you know anything about a sale of that piece of property by William A. Jamison's trustee at the court in 1879, in February?

A. I attended a sale of a piece of property at the court-house; I suppose at the time stated; I suppose the same piece of property.

Mr. KINEALY: Please confine yourself to what you know.

A. I don't know.

Mr. ROWE: Did you ever attend a trustee's sale of any property at the east front door of the court-house?

A. I did.

Q. When was that?

A. I couldn't tell you, sir.

Q. Have you any recollection of the number of years ago that it was?

A. No, sir; not the sli-test.

Q. Who was selling the property? Who was the trustee?

A. I couldn't tell you that.

Q. How many times have you attended sales of property by trustees at the east front door of the court-house?

A. Once.

Q. Only on one occasion.
A. On one occasion.
Q. Do you know what property it was that you attended there to buy or to purchase?
61 A. Well, if my memory is correct, and I think it is, it was the particular property that you speak of; that property that you described.
Q. On what occasion did you become the purchaser of any property that was offered for sale by a trustee under a deed of trust?
A. Well, I don't understand what you mean by the word "purchaser." I made a bid on property that was sold that day, and the property was knocked down to me by the auctioneer to my bid.
Q. How much was it that you bid?
A. It has been a long time ago, sir. Those things I never had any occasion to think of it, but I think it was four thousand dollars. I am not sure. I coulden't tell you positively.
Q. Did you receive a deed?
A. I received a deed.
Q. Did you pay four thousand dollars for that property?
A. No, sir; not one cent.
Q. Were you the holder or owner of the notes that were secured by the deed of trust that the property was sold under?
A. I never saw any notes or deed of trust.
Q. Who was it that furnished you the means with which to purchase that property?
A. It diden't require any means to purchase that property, sir. I made a bid and the property was sold at my bid and I was presented with the deed to the property.
Q. You paid nothing?
A. Not a cent.
Q. Who were you acting for?

Objected to as a conclusion of law.

The COURT: Ask him who was acting in the matter and what was said and done.

Q. How did you come to be a purchaser at that sale?
A. I was requested to go there and purchase that property—make that bid on that property at that sale.
Q. Who requested you to do that?
A. Mr. L. A. McGinnis.
62 Q. After you received the deed to the property did you claim to be the owner of it?

Objected to as being a conclusion of law. Objection overruled; to which ruling of the court the defendant, by counsel, then and there duly excepted.

A. Well, I made no profession of ownership of the property. I held the property and was ready to give it up at any moment.
Q. Who were you ready to give it up to?

Same objection and ruling. The exception noted.

A. To any party to whom I was directed.
Q. To whom did you look for directions?
—. To Mr. McGinnis, of course.
Q. L. A. McGinnis?
A. L. A. McGinnis. I was holding the property for him, as I understood.
Q. What did you do with that deed after you received it?
A. I kept it in my possession, sir.
Q. How long did you keep it?
A. I kept it until the property passed out of my possession and then I destroyed it.
Q. You destroyed the deed?
A. I destroyed it, to the best of my recollection. As I say, it has been a good while ago, but I think I destroyed that deed myself. I think I remember having destroyed it.
Q. Did you ever put it on record? Did you ever file it for record in the recorder's office?
A. Never, sir.
Q. To whom did you convey that property?
A. To Mr. John Letcher.
Q. Did you know Mr. Letcher?
A. Personally, I knew him.
Q. At the time you made the conveyance to him did you have any conversation with him?
A. I did not.
Q. Did you receive anything from him as a consideration for *consideration for* conveying that property to him?
A. I did not.
Q. Why did you convey that property to Mr. John Letcher?

63 Defendant's counsel objected to the reasons of the witness as being incompetent.

The court overruled the objection; to which ruling of the court the defendant, by counsel, then and there duly excepted.

A. Because I was requested to do so.
Q. Who requested you to convey it?
A. Mr. L. A. McGinnis.
Q. Why did you fail to file that deed for record after you received it in the recorder's office?
A. I never felt any interest in the matter, sir. There was no dollars and cents in it for me, and I thought if the parties interested didn't care to file the deed I did not. It was no interest to me.
Q. What conversation, if any, did you have with Mr. McGinnis at the time you made the conveyance to Letcher?
A. I couldn't tell what conversation passed.

Counsel on behalf of Martha E. Bobb objects to any statement between the witness and L. A. McGinnis as being irrelevant and incompetent; which objection the court overruled, and she, Mrs. Bobb, then and there duly excepted.

WITNESS: You want to know what conversation I had with him?

A. Yes, sir.

A. I don't think there was any extensive conversation. Mr. McGinnis merely requested me, I believe, to make the property over to Mr. Letcher and I did so.

Q. Did he state why he wanted the property conveyed to Mr. Letcher?

Objected to as before by Mrs. Martha E. Bobb for irrelevancy and incompetency; which objection was overruled, and Mrs. Martha E. Bobb then and there duly excepted.

A. Well, I think he stated why. I am very positive he
64 stated why he wanted the property turned over to Mr. Letcher.

Q. Well, what was the reason?

Defendant's counsel objects to said question as being hearsay evidence against Mrs. Bobb. Objection sustained.

Q. What conversation did you have with Mr. McGinnis at the time that you made the transfer to John Letcher or before you made the transfer to John Letcher, when you were requested to do it?

Objected to. Objection sustained.

Q. Why did you obey Mr. McGinnis's directions about this property?

A. Merely thinking I was doing him a favor. You mean in disposing of the property?

A. Yes, sir.

A. Well, because I was very glad to get rid of it.

Q. What connection, if any, did Mr. McGinnis have with the ownership of the property?

A. I can't answer that because I don't know any connection between Mr. McGinnis and the ownership of the property.

Q. When you went with Mr. McGinnis to attend the trustee's sale and purchase this property did you know for whom you were buying it?

Objected to.

The COURT: That is a question that can be answered yes or no. He may answer that question.

A. I had no direct knowledge for whom I was buying. To the best of my recollection of what occurred at that time, as I say, I can't just recollect what did occur.

Q. You simply went there and attended the sale and obeyed the directions that Mr. McGinnis gave you concerning the matter?

A. I didn't exactly say I obeyed directions. I didn't obey directions. Mr. McGinnis made a request to me and I complied with his request. I obeyed no directions.

Q. You did everything Mr. McGinnis requested you to do in connection with the property?

65 A. I did what Mr. McGinnis requested me to do in regard to the property.

Q. Look at that and state whether you ever saw that before.

Witness is handed a receipt from the recorder's office of deed from Mr. Bird, by trustee, to Baggot, filed February 28th, 1882.

Objected to as irrelevant and incompetent by Mrs. Martha E. Bobb.

A. I don't remember ever having seen it.

Q. Look at that signature on the bottom. Do you know whose signature that is there?

Objected to as irrelevant and incompetent. Objection overruled; to which ruling of the court defendants, by counsel, then and there duly excepted.

A. I don't know whose signature it is.

Q. What is your best recollection as to the time at which you last saw this deed from Jamison's trustee to you?

A. You mean for me to give you the date?

Q. Yes.

A. I couldn't do it, sir.

H. C. Bagot's Cross-examination.

Cross-examination by Mr. KINEALY:

Q. Are you quite sure that you destroyed that deed? Isn't — possible that you may be mistaken in that particular?

A. I think I destroyed it. I couldn't swear positively that I did, but the best of my recollection I destroyed that deed.

Q. Look at that document (handing same to witness) and then say whether, having refreshed your memory from that, you ever destroyed that deed. Did you ever see that before?

A. I couldn't say whether I ever saw it or not.

Q. Now, having seen it, can you say you are able to say, with any certainty, that you ever destroyed that deed?

A. Well, sir, I still think I destroyed the deed in my possession at that time to that property. (Here deed is shown to wit-

66 ness, as already offered in evidence.)

Q. You are not certain of it, are you?

A. Just as I stated at first, I am not sure of it; but I think I destroyed the deed to that property that was given to me.

By Mr. ROWE: Did you ever bring this deed to the recorder's office to have it recorded?

A. I never took any deed to the recorder's office.

Testimony of Louis A. McGinnis.

Plaintiff's counsel then called LOUIS A. MCGINNIS, who, being duly sworn, testified as follows:

Q. What is your name?

A. Louis A. McGinnis.

Q. What is your business?
A. I am an attorney.
Q. Do you know the defendant Henry C. Baggot?
A. Yes, sir.
Q. Do you know Charles Bobb?
A. Yes, sir.
Q. Did you know John Letcher duering his life?
A. Yes; I have been introduced to him. I knew him to see him; I wasn't very intimately acquainted with him.
Q. Did you know William C. Jamison in February, 1879?
A. I knew Mr. Jamison, the attorney. I don't know whether William A. (A. or William C.).
Q. The attorney?
A. Yes, sir.
Q. The gentleman that was trustee in the Bird deed of trust?
A. Yes, sir.
Q. You know this property commonly called the Bird place, 26 and $\frac{92}{100}$ acres, on Goodfellow avenue?
A. I never saw the property; I know of it.
Q. Did you ever call upon William C. Jamison to give him any directions to make a sale, as trustee under the Bird deed, of that property?
A. I think I did.
Q. Where was that?
67 —. I don't remember the year. It was some 6, 7, or 8 years ago; I don't remember exactly.
Q. You were present at the sale under the deed of trust when Mr. Baggot was the purchaser at the sale; you recollect that?
A. Yes; I think I was there.
Q. Was it some time before that sale?
A. Well, it was in relation to that sale that I saw him.
Q. About how long before that sale was it that you saw him?
A. Well, just time enough to have the advertisement properly inserted—that is, the proper length of time—and a sale had under it; about that time—I don't know; a few weeks before that, I guess.
Q. Did you request Mr. Jamison to sell the property as trustee?
A. Yes, sir.
Q. Did you exhibit to Mr. Jamison, at the time you called on him and made the request to sell as trustee under the deed of trust, the note secured by the deed of trust?
A. I don't remember particularly; I suppose I did, or he wouldn't have paid any attention to my request to sell it if I diden't.
Q. Did you have possession of the note at that time?
A. Very likely I did.
Q. Did you make any arrangement for the trustee to sell?
A. I requested him to sell.
Q. Were you the holder and owner of that note secured by the deed of trust on the Bird place?

Mr. KINEALY: The holder or owner?

Mr. ROWE: The holder and owner.

A. I was the holder. I guess I held it in my hands.

Q. Were you the owner of the note?

68 A. No, sir; I wasn't the owner.

Q. Where did you get the note?

A. Well, I don't remember who I got it from.

Q. Who instructed you to go to Mr. Jamison to request the sale of the property under that deed of trust?

A. I can't remember that positively. I can tell this about it: It was either Mr. Bobb or Frank McGinnis, but whether both of them or either of them I don't remember which.

The COURT: Which Mr. Bobb?

A. Mr. Charles Bobb, the defendant.

Q. Do you know who paid for the advertisement in the newspaper?

A. I paid for it.

Q. Do you know who paid the trustee for the services in making the sale?

A. I paid it.

Q. Where did you get the money?

A. I believe I got the bulk of the money from Mr. Bobb.

Q. Mr. Charles Bobb?

A. Yes, sir.

Q. Did you request Mr. Baggot to attend the Jamison sale and purchase the property?

A. Yes, sir.

Q. What, if anything, was paid for the conveyance from Jamison, as trustee, to Baggot?

A. There wasn't anything paid. That note was what bought the property.

Q. Do you know what became of the deed that Jamison made to Baggot?

A. Well, I can't say. It has been a long while ago. I don't know. I believe Jamison gave me the deed, and it is likely I gave it to Mr. Baggot. I may have had it recorded and then gave it to him. I don't remember the particulars now how it was done exactly.

Q. Will you look at this recorder's card—February 28th, 1882. Do you know whose signature that is on there?

A. Yes, sir.

Q. Whose signature is that?

69 A. That is Frank McGinnis's signature.

Q. Do you recollect ever leaving that deed at the recorder's office for record?

A. I don't recollect leaving it; I may have.

Q. February, 1879, is the date of conveyance. Look on the inside and you will find it. You will notice the date of recording is February, 1882. Do you recollect leaving that deed at the recorder's office?

A. I say I don't remember. I remember of getting it of Jamison,

but I don't remember what I did with it then or at any subsequent time.

Recess until 2 o'clock.

2 O'CLOCK P. M.

Examination of Mr. McGINNIS resumed:

Q. Look at this card, dated July 3rd, 1883—deed from Baggot to Letcher. Whose signature is that?

A. That is Frank McGinnis' signature.

Q. Look also at this card, dated July 19th.

Defendant's counsel objects to any inquiry about said card as being irrelevant and immaterial.

Mr. ROWE: It is for the purpose of showing the signatures to the two cards; one signature in one hand and another signature in another hand.

The COURT: Those cards are not offered in evidence?

Mr. ROWE: No, sir; but I propose to offer them. I want this witness to testify to the signature of the parties at the bottom of the card.

The COURT: The question now is as to the signature?

Mr. ROWE: Yes, sir. Is this Frank R. McGinnis' signature to this card, dated January 19th, 1881, deed from McGinnis to McGinnis?

A. That is Frank R. McGinnis' handwriting. I don't know this one.

70 Q. Will you look at this deed of the 19th of July, 1879, Henry C. Baggot to John Letcher, and state in whose handwriting that is?

A. That is in my handwriting.

Q. What consideration, if any, passed from John Letcher to Henry C. Baggot for the execution of that deed?

Mr. KINEALY: If you know.

A. Well, I don't know.

Mr. ROWE: Were you present when this deed was signed and acknowledged by Mr. Baggot?

A. Yes; of course I was. I took the acknowledgment.

Q. Was this deed ever delivered to John Letcher?

Objected to.

The COURT: Do you admit the delivery of the deed?

Mr. KINEALY: That is a question I don't think I am called upon to answer. Here is the recorder's certificate that that deed was of record, and if that don't import a delivery there is a change in the rule of law.

The court overruled the objection; to which ruling of the court the defendant, by his counsel, then and there duly excepted.

Q. Was this deed delivered to John Letcher?

A. I don't know.

Q. Did you have any conversation with Henry C. Baggot about the execution of this deed?

A. Yes; I suppose I did.

Q. State under what circumstances, if any, Henry C. Baggot came to execute this deed.

Defendant's counsel objects to any statement of who directed Mr. Baggot to execute the deed and objects to anything except the actual execution of the deed as being irrelevant and incompetent.

The court overruled the objection; to which ruling of the court the defendant, by counsel, then and there duly excepted.

A. Well, I requested him to do it. He was acting as my friend in the matter. That is all he had to do and all he did do in the matter.

71 Q. Henry C. Baggot was acting as your friend in the matter and you requested him to execute the deed?

A. Yes, sir.

Q. What did you do with the deed after it was signed and acknowledged before him?

A. I suppose I took it over with me after he had signed and acknowledged it; I don't remember.

Q. Did he receive anything from you for the execution of this deed?

A. No, sir.

Q. Did he receive anything from John Letcher?

A. If he did I never knew it.

Q. What did you do with the deed after it was signed and acknowledged?

A. Well, I don't remember. It has been some time ago. I don't know what I did with it.

Q. Did you have any interest in this property at the time it was in the name of Henry C. Baggot?

A. No, sir.

Q. Or at another time?

A. No, sir.

Q. Who was it requested you to get Henry C. Baggot to convey it to John Letcher?

A. Well, as well as my memory served me, I think it was Frank McGinnis. He didn't tell me to give it to Baggot. He told me to give it to somebody.

Q. Frank R. McGinnis?

A. Yes, sir.

Q. Did you ever have any conversation with Charles Bobb about any disposition that was to be made of this property?

A. I don't think I ever did.

Q. That is, after the conveyance to Baggot?

A. Well, I don't know that I did at any time. I don't remember of it at any time.

Mr. McGinnis: Do you know if John Letcher ever called

72 with this deed on you and deliver it to you before it was recorded to deliver it back to you again?

A. Did he ever call to give me that deed?

Q. Yes; give it to you before it was recorded.

A. I don't remember of it. I never taxed my mind with the matter particularly at all.

Q. Do you recollect before the recording of this deed that John Letcher called at your office and wanted to deliver this back to you, stating that it was unrecorded and the deed could just be cancelled or destroyed?

Objected to as irrelevant, incompetent, and hearsay.

Objection overruled and exception noted.

A. That might be so, but I don't remember it. I know Mr. Letcher has been in the office, but I don't remember what it was for.

Q. Were you present at Clayton, in St. Louis county, about October, 1880, and heard John Letcher give his testimony when his deposition was being taken about this deed?

A. I don't know; I went out there in some deposition matter, but I believe it was Mr. Bobb's deposition they were going to take, but they didn't take it.

Q. Do you recollect John Letcher's deposition being taken out there—taken before Henry R. Watson as notary public?

A. I don't think I was present; I don't remember it, but I don't think I was.

Q. (Paper handed to witness.) Do you know in whose handwriting this paper from John Letcher and wife to Martha E. Bobb, dated first of May, 1881,—?

A. This is in Frank McGinnis' handwriting.

Q. What relation, if any, is Frank McGinnis to Martha E. Bobb?

A. He is a son-in-law of Mrs. Bobb.

73 Q. He is married to Mrs. Bobb's daughter?

A. Yes, sir.

Q. He is no relation to the defendant Charles Bobb?

A. No, sir.

The COURT: You say he is a son-in-law of Mrs. Bobb?

A. By a former husband.

Mr. ROWE: Frank R. McGinnis' wife is Mrs. Bobb's daughter by a former husband.

Q. You were the notary that took the acknowledgment to this deed?

A. Yes; I took the acknowledgment.

Q. Did you have any conversation with John Letcher at the time that he signed this deed?

A. Well, I remember that acknowledgment.

Mr. KINEALY: Please answer the question asked.

A. Well, it depends on what kind of a conversation you mean.

Q. Any kind of a conversation?

A. That is what I was going on to explain. That was taken at Frank McGinnis' residence. We were all talk*ed* on general subjects. We were at his residence at the time I took that acknowledgment, as I remember; that it was down on Scott avenue.

Q. Who requested, if you know, John Letcher to make this deed?

A. I don't know

Cross-ex. of L. A. McGinnis.

Cross-examination by Mr. KINEALY:

Q. Mr. McGinnis, I believe you testified that you took one of those deeds to the recorder's office to record. On your direct examination there was a receipt shown to you here on the trial signed by Frank R. McGinnis?

A. Yes, sir.

Q. For deeds deposited in the recorder's office for record? Do you testify that one of those deeds you put upon record yourself?

74 A. Yes; I testified, as I remember that I put that Jamison deed on record.

Q. That is your best recollection at the time you testified?

A. Yes, sir.

Q. You were mistaken in that, wer-n't you?

A. Well, from that receipt I believe I am, though I didn't know it before and don't know it now only what that receipt says.

Q. You testified also in your direct examination that you got money from Mr. Bobb to pay charges of Jamison connected with this sale under deed of trust. I will ask you are you positive in that regard—that you have got the money from Mr. Bobb?

A. I think so.

Q. Are you any more positive in regard to that matter than you were in regard to the recording of that deed?

Objected to. Objection sustained; and defendants severally excepted to the ruling then and there.

Q. Judging from the fact that you testified as positively to the recording of the deed by you which we have proved to have been recorded by Frank R. McGinnis, will you say you are positive now that you received that money from Mr. Bobb or might not have been equally mistaken about that in regard to the deed.

Objected to. Objection sustained; and defendants severally and duly excepted to the ruling.

Q. Might it not have been Frank R. McGinnis who gave you that money instead of Mr. Charles Bobb?

Objected to. Objection overruled.

A. It is a possible thing.

Q. You wouldn't swear that it wasn't so, would you, positively?

A. Well, I can't swear to any of those things only to my best remembrance on the subject. I thought I had recorded that deed, but I believe I did not, and my memory on these costs paid to

75 Mr. Jamison is that Mr. Bobb gave it to —, but I don't remember the exact amount.

Q. You may have been deceived in that to-, may you not?

A. Well, of course I may have been.

Mr. ROWE: Your best recollect- is, at the present time, that

Charles Bobb gave you that money for the purpose of paying the costs and charges to Jamison of the trustee's sale. Is that it?

A. Yes, sir.

Mr. KINEALY: And your best recollection before was that you recorded the deed, was it not?

A. It was.

Plaintiff's counsel offers in evidence the deposition of John Letcher.

Deposition of John Letcher.

Defendant's counsel, on behalf of Mrs. Bobb, objects to the same as being irrelevant and incompetent as against her.

The court overrules the objection; to which ruling of the court the defendant, by counsel, then and there duly excepted.

Defendant's counsel further objects to said deposition because it does not show that Mrs. Bobb is any party to the record or that she is affected by it; that it was a proceeding between other parties and that it is a mere declaration of Mr. John Letcher, who on the face of this bill had no beneficiary interest in this property, as alleged by the plaintiff.

The court overruled said objection, to which ruling of the court the defendant, by counsel, then and there excepted.

NOTE.—It is admitted that John Letcher is dead.

Said deposition, taken in case No. 53455, was then read in evidence.

Direct examination of JOHN LETCHER, Esq.:

I am one of the defendants in this case.

I know there is such a place as the Burd place.

I never have been on the property described in the petition.

76 I have never seen it that I know of.

There was a deed made to me by Henry C. Bagot as trustee of the property. The deed purported to convey to me the title to the Burd property.

Yes, that is the same property—the Burd property.

I cannot remember how long since the deed was made to me; can fix it by the circumstance of Mr. McGinnis taking an appeal in the case of Hibernia Bank against Frank R. McGinnis in the circuit court of the city of St. Louis. The appeal was taken to court of appeals. I do not know how it happened that Mr. Bagot made the deed to me. I suppose it was at the suggestion of Mr. Frank R. McGinnis, as I did not know Mr. Bagot.

I will state in connection with that I was called in the city of St. Louis to go security on bond for this appeal for McGinnis. I think Mr. McGinnis requested me to go to the city. I went into court to sign that bond, and before signing it he proposed to give me some security for signing it. I do not know whether it was before or after signing the bond. The deed from Mr. Bagot to me was handed to me by Mr. Frank McGinnis. He handed — to me after signing

the bond, very shortly after; perhaps that day or a subsequent day. It was not at my special request that the deed was handed to me.

I told him that I wanted him to indemnify me for any loss that I might sustain by having signed the bond; do not remember whether the conversation was before or after the signing of the bond. I had no conversation with either Charles Bobb or Martha E. Bobb about signing the bond; had no conversation about getting indemnity for signing bond, either with Charles Bobb
77 or Martha E. Bobb. I never ascertained the value of the property that was deed- to me. I never took possession of it. I never paid the taxes on it or ever looked after it; collected no rents.

Never had the title to the property examined. I do not know what title I have to it; never paid any attention to it.

I have not the deed from Bagot to me. I do not know who has it. Well, sir, when I ascertained that the judgment had been paid at the request of Mr. McGinnis I delivered the deed, I think, to Mr. Louis McGinnis at his office, in St. Louis city.

Delivered it to Mr. Louis McGinnis in pursuance of the letter of Mr. Frank McGinnis. I supposed it to be Mr. Louis McGinnis.

I never paid anything for the property nor promised to pay anything for it. I suppose Mr. Bagot to be the owner, as the title was conveyed from him to me.

I have never conveyed the property to any one. I told the gentleman to whom I handed the deed that I was ready at any time to convey back the property.

I never recorded the deed; I know I never recorded it or had it recorded. I do not — why I do not record the deed; carelessness, more than anything else. It may be recorded; I do not know. Nobody ever requested me not to record the deed or to record it. I know Mr. Charles Bobb and Martha E. Bobb; I am related to both of them. I saw Mr. Charles Bobb last night and this morning; I did not see Mrs. Bobb. I never had a conversation with Mr. or Mrs. Bobb about this property. I had no conversation about this suit, only that a suit had been brought against Henry C. Bagot, John Letcher, and Charles Bobb. I do not know anything about the way in which the title got into Mr. Bagot. I do not remember whether I ever heard that Mr. Charles Bobb or Martha E. Bobb
78 had any interest in the property. I do not claim any interest in it now. I heard of this property at one time. A minister in our neighborhood spoke of the Burd place as being a very "nice place." I may have heard of the place since; when I got the deed I might have learned that Mr. Charles Bobb had a deed of trust on it; who claimed the property I do not know; it is more than likely that I heard that Mr. Charles Bobb had a deed of trust on the place; cannot say from whom I heard it. I do not know for whom Mr. Bagot was trustee.

That was the only deed I ever had from Mr. Bagot.

JOHN LETCHER.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, Henry R. Watson, a notary public within and for the city and county of St. Louis, do certify that in pursuance of the annexed notice, came before me at the office of the sheriff and collector in the court-house, at Clayton, in the county and State last aforesaid, John Letcher, who was by me duly sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination was reduced to writing and subscribed to it in my presence on the day between the hours and at the place in that behalf first aforesaid, and his said deposition now herewith returned, and I hereby certify that the said John Letcher is resident of St. Louis county, State of Missouri, and I further certify that I was duly qualified as notary public on the 25th day of February, 1876, and my term expires February 23rd, 1882.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal, at my office, in the county and State aforesaid
79 this 11th of October, 1880.

HENRY R. WATSON,
Notary Public.

Plaintiff's counsel next offers in evidence the depositions of Charles Bobb, taken in the same case.

Defendants' counsel objects to the introduction of the same as against Mrs. Bobb for the reasons before stated, and for further reasons that Mr. Charles Bobb in this case is an incompetent witness and his deposition is incompetent.

The court sustained the objection.

Plaintiff's counsel next offers in evidence the deposition of Martha E. Bobb, taken in case No. 55455, John H. Bobb *vs.* Henry C. Baggot, filed April 4th, 1881.

Defendants' counsel objects to said deposition as against Mrs. Bobb on the ground that she is a party to this case and is present in court (which is admitted).

Which objection was overruled by the court; to which ruling of the court, the defendant, by counsel, then and there duly excepted.

Said deposition is read is evidence as follows:

Deposition of Martha E. Bobb.

MARTHA E. BOBB, of lawful age, being produced, sworn, and examined, deposeth and saith:

Q. Please state your full name.

A. Mrs. Martha E. Bobb.

Q. What was the date of your marriage to Mr. Charles Bobb?

A. I think it was in 1856; it was twenty-five years ago very nearly.

Q. Were had you lived previous to your marriage to Mr. Bobb?

80 A. I lived a part of the time at my first husband's home, with his relatives after his death and with my mother.

Q. At the time of your marriage to Mr. Charles Bobb were you the owner of any money or property?

A. I had some money.

Q. You had no property at that time?

A. No, sir; no real estate whatever.

Q. Had you any personal property?

A. Well, up *tp* the time I broke up housekeeping. I had before my husband's death—before we broke up housekeeping and sold out—before the death of my first husband.

Q. But at the time of your marriage to Mr. Charles Bobb, as I understand you, everything that you had was in money?

A. In money; yes; only an interest in my father's estate.

Q. You had also an interest in you- father's estate?

A. Yes, sir.

Q. What was the name of your father?

A. Francis Gedroux.

Q. I believe he was a resident of St. Louis county, was he not?

A. Born in Canada.

Q. Did he die before or after your marriage to Mr. Charles Bobb?

A. Before, sir; before my first marriage.

Q. Was his estate settled at the time of your marriage with Mr. Charles Bobb?

A. No, sir. The payments had not been made. The property had been sold, but not all of it paid.

Q. Some of the payments, you say, were made after your marriage to Mr. Charles Bobb?

A. Yes, sir.

Q. Who was the administrator of your father's estate?

A. My mother.

Q. She is still alive, is she?

A. Yes, sir.

Q. To whom were the payments on account of your father's estate which were made after your marriage with Mr. Charles Bobb paid to?

81 A. To the heirs.

Q. To whom was the payment which was coming to you made?

A. It was made to me by Mr. Comfort—Lawyer Comfort. He is dead now.

Q. That was paid to you in money?

A. Yes; in gold.

Q. What was the amount that was paid to you after your marriage to Mr. Charles Bobb?

A. I think it was about four hundred dollars. I am not certain, but think it was between three and four hundred dollars.

Q. What use was made of the money?

A. That and other that I had I turned over to my husband. As he was my husband, I turned it over to him.

Q. You gave it to him?

A. Yes; to invest and take care of for me.

Q. You say (the other). How much besides the four hundred dollars was there, about?

A. Well, I guess I had about sixteen hundred dollars besides—1,600 or 1,700 besides. I don't recollect exactly to a dollar, but with the payments *to* that had formerly been made to me of the estate it was, I think, about eleven hundred dollars altogether, and about fifteen hundred dollars of other money, of cash that I had on hand, was the amount, less, maybe, a hundred or two hundred dollars.

—. Do I understand you that the amount that you turned over to your husband was about four hundred dollars and, in addition to that, about fifteen or sixteen hundred dollars?

A. Yes, sir.

Q. Then your recollection is that you turned over to him about two thousand dollars?

82 A. Well, I think it was more than two thousand altogether, because there was some moneys I had loaned out to friends that I got after that; small amounts—a couple of hundred dollars or so and maybe more—that my mother had that she paid me afterwards. Altogether I had some twenty-six or twenty-seven hundred dollars in cash.

Q. That you turned over to Mr. Charles Bobb, as I understand it?

A. Yes; I might have more, but I spent some of it after. I had it, but I spent some of it. It was about twenty-six or twenty-seven hundred altogether.

Q. In what form did you turn this over to Mr. Charles Bobb?

A. Just gave it to him in his hand.

Q. Was it in the form of money or checks?

A. Money, sir; some of it was in gold, and there was some premium on that. I recollect I gave him about three or four hundred dollars in gold.

Q. Did you not turn over some of it to him in the form of checks?

A. No, sir; after my husband's death I never kept a bank account.

Q. Simply kept this twenty-six hundred——

A. Kept this money right in my possession.

Q. Made no deposit?

A. No, sir.

Q. The money that came outside of that four hundred dollars, which you derived from your father's estate, from what source did the balance of it come?

A. Moneys that I had that my husband left me before he died and the sale of our furniture. Some of the money was from the sale of our furniture when we broke up housekeeping.

83 Q. And the rest of this money that you turned over to Mr. Charles Bobb outside of the four hundred dollars was derived from the estate of your husband?

A. A part of it, sir; I told you I had ten or eleven hundred dollars in my father's estate, which had been settled before; between nine and eleven hundred dollars; I don't recollect exactly. I sup-

pose it could be found out if a person will search the probate records, maybe.

Q. Then there was but four hundred dollars received from your father's estate after your marriage to Mr. Charles Bobb?

A. Oh, altogether I got about ten or eleven hundred dollars from my father's estate, but outside of that I had between fifteen and sixteen hundred dollars.

Q. Which was from the estate of your first husband?

A. No estate, sir; it was his money. He was well known here, as he was appraiser and deputy clerk of the court of common pleas under his stepfather, Mr. Philip Tipet, for six years. Mr. Clover knows him well. He visited our house often.

Q. Then the fifteen or sixteen hundred dollars was not received from the estate of your first husband, but was given to you by him during his lifetime?

Objected to as having already been answered.

Q. In what form did Mr. Charles Bobb invest this money which you say you turned over to him?

A. I don't know whether he made any short loans for me immediately, but the principal investment was on a piece of property known as the Hayden place, on the king's highway. He consulted me, and the lady that owned it, Mrs. Hayden, called on him for a loan on that property. He consulted me whether I was willing to invest what I had on it and I told him yes; that I considered it a very safe investment; that I did not suppose for a moment
84 that she would let her property go for that amount, and that I was willing to invest it, which I did.

Q. How long after your marriage to Charles Bobb was it when you turned over this amount of money to him?

A. Well, immediately—in a short time. First I gave him what I then had on hand, and then gave him the balance. I cannot recollect exactly how long it was, but a very short time afterwards.

Q. Do you recollect how much he invested for you in this loan on the Hayden place?

A. Well, she wanted twenty-five hundred dollars; maybe a few dollars over; 2,550 dollars, I think, was what I loaned on it—2,550 or 2,551, I believe.

Q. Do you recollect what year that loan was made?

A. I think it was in 1857.

Q. You don't recollect what time of the year, do you?

A. Well, it was in the fall; it was cold weather.

Q. Do you know whether Mrs. Hayden is living?

A. I do not. At last accounts I heard she was in very bad health. The last time she was here, which has been three or four years ago, she intended to go to Europe for her health; had dropsy, and was in a poor state of health. I have not heard since whether she is living or got well.

Q. Where was her last place of residence?

A. When she abandoned the property on the king's highway, that I loaned this money on, she went to New Orleans, and from

there she came back here to live awhile, but where she is now I don't know.

Q. What became of that loan made on the king's highway
85 property—the Hayden property?

A. Well, we loaned that money, and we had to sell it—had to sell it—and it was bid in, and we made it our home there for eight years, and this gentleman here lived with us.

Q. You mean Mr. John H. Bobb?

A. Just as you please to call him, sir.

Q. Do you remember in what year the property was sold out and you took possession?

A. Well, I think it was a little over a year.

Q. After the loan was made?

A. Yes; the loan was made for one year, and at the end of that year there was neither interest nor principal paid, and we heard—we were not living in the city then—we heard they had gone—abandoned the property—and Mr. Bobb went out to see about it. The property had been abandoned and was in a very bad state. He closed it up and fenced it and told me of it, and I told him then that he must advertise it and sell it, and he did.

Q. Who bid it in?

A. He did himself.

Q. In his own name?

A. Well, I suppose so.

Q. For you?

A. Well, that was the intention as long as it was my investment. I suppose he bid it in for me; always claimed it to be mine.

Q. Was any sale made of that property afterwards—the Hayden place?

A. Yes; after I lived there eight years, but before that time I had an opportunity of selling it for eight thousand dollars, which my husband urged me to do. I declined and told him it was a pleasant home, and I was pleased there and we would remain;
86 but after we had been there about eight or nine years—a little over eight years—I then sold it—sold it to Mr. Wilbur F. Brink or leased it to him—rented it to him first for one year, with the refusal of the purchase at the end of that time.

Q. And he finally bought it?

A. Yes, sir; he bought it.

Q. Do you recollect what he paid for it?

A. Yes. He paid me thirteen thousand dollars for it and eight hundred dollars for one year's rent.

Q. Paid you thirteen thousand dollars?

A. Yes, sir.

Q. Was that a cash payment?

A. No, sir.

Q. In what form was that paid, Mrs. Bobb?

A. Well, it was paid in one, two, or three years, I think, at either seven or eight per cent. interest.

Q. And a portion cash?

A. Yes, sir; one payment was made cash.

Q. One payment cash and the balance in notes at one, two, and three years?

A. Yes, sir.

Q. Are you sure it was Mr. Brink that bought?

A. He bought—yes; bought it. I don't think it was for himself. He bought — other parties that he was agent for.

Q. Was it not Mr. John A. Smithers that bought?

A. Well, he may have bought it for him, but Mr. Brinck bought it from me. He paid me the payments. I don't know who he was buying it for, but I understood it was for other parties.

Q. Did Mr. Brinck give his own notes?

A. I believe he did.

Q. Were those notes afterwards paid?

A. Every cent.

Q. The thirteen thousand dollars was paid?

A. Yes; with interest.

87 Q. Do you remember at what time the payment was made?

A. Well, they were made at the proper time.

Q. At the time they were due?

A. Yes, sir.

Q. And who received those payments?

A. I received a portion of them, and Mr. Bobb. He attended to my business, but I generally collected the rents and sometimes the interest. Mr. Bobb, I think, generally collected that principal note.

Q. Mr. Bobb collected the principal?

A. I think so.

Q. Then what disposition was made of that fund, Mrs. Bobb?

A. It was invested, sir, for my benefit.

Q. Who invested it for you?

A. Mr. Bobb.

Q. Do you know in what he invested it?

A. Certainly.

Q. Please state which piece of property that was.

A. Well, he invested money in loans for me at first—in loans.

Q. To whom were these loans?

A. I could not tell you just now. I would have to refer to the loans. The money was invested time after time in loans until – may have bought some property. When the collections were made and the principal came in, I think I invested them in property, but I made loans—a good many loans—and from these loans a good deal of the property came to him.

Q. Can you state which of the property came to him from those loans?

Defendant's counsel objects to any testimony except in regard to acquiring the piece of property in question.

Q. Do you know this piece of property described in the petition in this case? This is a suit against Henry C. Bagot, John Letcher, Charles Bobb, and Martha E. Bobb, and the piece of property mentioned in the petition in the case is what is sometimes called the

Bird place. It is in U. S. survey 2976, and a small portion
88 of it—two acres and $\frac{26}{100}$—is in U. S. survey No. 1913. I think the whole of it is known as the Bird place, and probably would be better known by you in that way.

A. Yes, sir.

Q. Do you make any claim to that property, Mrs. Bobb?

A. I do, sir.

Q. What claim do you make to it?

A. I make the claim that I bought the deed of trust of that place, sir.

Q. From whom did you purchase the deed of trust?

A. I bought it from the Exchange Bank of St. Louis.

Q. Was the Exchange bank the holder of the notes?

A. Yes; the eight-thousand-dollar deed of trust and the notes.

Q. How did you happen to know that the deed of trust and notes was for sale?

A. For the reason that Mr. Bobb and Mr. Bird were friends, and Mr. Bird came to Mr. Bobb to see if he could do anything for that place, and I bought the deed of trust. I had the money and I bought it.

Q. This deed of trust had already been made before Mr. Bird spoke to Mr. Bobb, had it?

A. The bank owned it—had it—and they wanted their money.

Q. And Mr. Bobb bought it?

A. I bought it.

Q. Who actually paid the money, Mrs. Bobb?

A. I did, sir.

Q. Do you mean by that that you yourself went down and made the payment?

A. Yes, sir; I went to the Exchange bank myself.

Q. In what form did you have the money, Mrs. Bobb?

A. I paid it in checks; a three-thousand-dollar check at that time, which was, I think, in the month of October—in the fall of the year—and three thousand dollars in the next month, and two thousand cash.

89 Q. What year was it that you bought this loan, Mrs. Bobb?

A. I believe it was in 1875. I can refer to the year.

Q. In October, 1875?

A. I think so.

Q. Was this your own check that you paid—the three thousand dollars—the first check?

A. My own check, sir.

Q. Upon what bank was that, Mrs. Bobb?

A. The Mechanics'.

Q. Who had deposited the money there against which you drew?

A. There was no money there for those checks. I discounted notes there of my own. I discounted the notes.

Q. Then there was money there that came from the discount of your notes?

A. Yes; of my own notes.

Q. Was anybody else upon the notes, Mrs. Bobb?

A. No, sir; nobody at all.
Q. Simply the discount of notes signed by you?
A. Yes.
Q. Without any endorser?
A. No endorser at all. I had the collaterals in my hand, and therefore needed no endorser.
Q. How much were those notes that they discounted?
A. Small amounts.
Q. The one that was discounted was that for a small amount?
A. I say my collaterals were small amounts.
Q. Yes; but was the amount of the note that you had discounted?
A. Four thousand dollars.
Q. Was that the only note you had discounted?
A. At that time?
Q. I mean discounted in order to pay for this deed of trust.
A. Yes, sir.
Q. Then from what source did the balance of the six thousand dollars come?
A. Collections I had; collections of rent and collections of moneys.
Q. Collections made by the Mechanics' bank, do you mean?
A. No, sir; most of the collections were made by Mr.
90 Wolf of *of* rents. The collections of rents were made by Mr. Wolf.
Q. Had they been made and the amounts deposited there by you before this purchase?
A. No, sir; I don't think they were deposited. I think most of the balance of the money was paid in cash. I don't think they were collected out of the bank at all.
Q. That is, you deposited in the bank there to make good your account?
A. No, sir. I can say that the balance in cash or moneys that I collected was from Mr. Wolf' collections. Therefore they were not in bank. I collected them from my agent.
Q. And paid them to the Exchange bank?
A. Yes, sir.
Q. From what property were those rents received?
A. Well, some was from some property and some, as I told you, on money—some interest.
Q. Do you recollect any piece of property upon which these rents were coming in?
A. Yes, sir.
Q. What pieces were they?
A. Well, one house—some property on Dayton street—and various property that Mr. Wolf was collecting from. You can refer to him and you can see what they were collected from. Different pieces of property I had here in the city.
Q. What other pieces of property were there besides those on Dayton street?
A. Well, I suppose collections on all the property—rents on all the property here in the city he has collected, sir.

Q. What pieces of property were they?

A. Well, there were some houses on Gratiot street and a house on Olive street that I owned; on Ewing and Garrison Av., and, as I told you, houses on Dayton street.

Q. Then it was from houses on Dayton street, on Gratiot street, and on Olive street?

A. Yes; and some collections made on interest notes.

91 —. By whom were those interest notes owing?

A. Well, I could not tell you just now; I would have to go home and refer to my papers.

Q. You have the papers with you at home?

A. Certainly I have, at home. I could not refer to them until I have them.

Q. Did Mr. Wolf make these collections of interest notes for you?

A. No, sir.

Q. Who made those for you?

A. My husband; he generally attended to those notes for me.

Q. In whose name were those loans made?

A. Mine.

Q. They were loans made in your name?

A. Yes, made in my name.

Q. To what volume had your fortune swollen at the time when you bought this Bird property. To what amount?

A. I could not tell you.

Q. Did you have any other investments at the time when you bought this Bird property besides the Gratiot-street property and the Dayton-street and the Olive-street property?

A. I don't know that I did. I may have had a few small loans.

Q. Do you think that outside of these three pieces of property you had any other investments at that time?

A. Well, I had bought property and had payments to be made on it that I owed and I had to mortgage it.

Q. What other pieces had you bought besides these three that you named?

A. Well, most of the property that I bought, a good deal was some that I got by making loans from it and taking up the deeds of trust and a few other pieces I bought.

92 Q. At that time your recollection, as I understand you, is that you had only three pieces—the Dayton-street, Olive-street, and Gratiot-street property?

A. Well, yes; the three Dayton-street houses and the Olive-street house and Gratiot-street.

Q. How many Gratiot-street houses were there?

A. I could not tell you exactly.

Q. You don't remember now?

A. No; I don't.

Q. You have sold those, then, haven't you?

A. No, sir; I have not.

Q. You had those houses, though, at the time when this loan was bought—this eight-thousand-dollar loan on the Bird place?

A. Well, I had them, but they were not all paid for.

Q. They were in your name, though?
A. Certainly in my name.
Q. Did the Gratiot-street house come from a loan, Mrs. Bobb?
A. Yes, sir.
Q. A loan made by you?
A. I bought them under a deed of trust.
Q. From a loan made by you?
A. I bought the deed of trust, I think, from other parties.
Q. You mean from Mr. Charles Bobb?
A. No, sir; I bought those from Mr. Albert Todd, if I am not mistaken.
Q. There is no incumbrance on the Gratiot-street property now, is there?
A. Well, there was. I don't k*b*ow whether there is now or not, but there was.
Q. You don't recol-ect whether it is paid for or not?
A. I do not.
Q. Yet that belongs to you, does it?
A. Yes, sir.
Q. Do you own the incumbrance that is on it?
A. Well, if there is an incumbrance on it I don't think I do, but I am not positive.
Q. So you went yourself and paid this money for this loan?
93 A. I did. I met Mr. Bird there and paid it there.
Q. At the Exchange bank?
A. Yes, sir.
Q. Five thousand, I understand you to say, was paid in cash, was it?
A. I paid two payments of three thousand each by check and the balance in cash.
Q. Now, the first check you said was on the Exchange bank, but what bank was the second check on?
A. I did not say it was on the Exchange bank, sir. I said it was on the Mechanics' bank.
Q. What was the second one?
A. The two checks of the three thousand dollars each was paid on the Mechanics' bank.
—. ——.
A. Yes, sir.
Q. And the other two thousand?
A. That was paid in cash.
Q. That was cash you had in your possession?
A. As I told you, collections; yes, sir. I never keep anything in my possession. I generally get my money from my agent. I don't keep no bank account at all.
Q. That had not been deposited in any bank—the two thousand?
A. No; it ain't safe for me to have any money in the bank.
Q. Why do you deem it not safe for you to have any money in the bank?

Objected to.

A. Well, I have my reasons. I would not tell them to you if you wanted me to.

Q. Was that Bird loan that you purchased paid to you—repaid to you again?

A. Never paid to me.

Q. Did you ever receive back the money?

A. I had to sell it.

Q. Who sold the property?

A. I authorized my son-in-law, Mr. McGinnis, to sell it—to advertise and sell it.

Q. Do you recollect who the trustee in that deed of trust was?

A. I don't know. I think it was Mr. Jamison.

Q. Were you present at the sale?

A. No, sir.

94 Q. Who bid in the property?

A. I authorized my son-in-law, if it did not bring the amount, to bid it in or have it bid in for me.

Q. And what did happen? Did he bid it in, or who did?

A. I think he had it bid in.

Q. Are you sure that he had it bid in?

A. Yes; he had it bid in in some one's name—some friend's name.

Q. Not in your name?

A. No, sir.

Q. Do you know in whose name it was bid?

A. Well, I have heard, I think, the mention of the name in the paper there; Mr. Bagot, I think it was in his name.

Q. Had you an acquaintance with him?

A. Only hearsay; I think I saw him once or twice.

Q. How did it happen that the property was bid in in the name of Mr. Bagot?

A. Because I authorized my son-in-law to have it bid in either in his name or some friend's name and he did so.

Q. For whose benefit was it bid in?

A. For mine.

Q. How, then, did it happen that it was not bid in your name?

A. Because I trusted him with it. It was as safe in his hands as in mine and I had confidence in him.

Q. Did you have any reason for not having it bid in in your own name?

A. Yes; I had.

Q. What was the reason it was not put in your name?

A. Well, I wanted to avoid trouble. I had been harrassed and troubled long enough and I did it to avoid trouble and lawsuits. When a man is determined to take the bread and meat out of his father's and out of his father's wife and children's mouths I

95 think I have to resort to some protection; that is why.

Q. You did it as a protection?

A. As a protection.

Q. To avoid the trouble of lawsuits?

A. Yes; exactly.

Q. Do you know what Mr. Bagot did with the property?

A. I don't recollect whether it brought the amount or not. I don't recollect that.

Q. Did you ever make any inquiry about it?

A. Yes; I did know. I did hear, but just now I don't recollect.

Q. Who paid the expenses of the sale under the deed of trust, Mrs. Bobb?

A. I did, sir.

Q. You personally went and settled?

A. No, no; I advanced the money to settle up all the expenses.

Q. Between Mr. Charles Bobb and you?

A. He had nothing to do with it.

Q. He did not pay the money?

A. No, sir.

Q. Has Mr. Bagot made any deed for that property?

A. I think he has; yes, sir.

Q. To whom has he deeded it?

A. Well, I can't tell you just now who the deed was made to, but I think to Mr. McGinnis. I think I had the deed made to Mr. McGinnis.

Q. Do you know which one?

A. Mr. Frank R. McGinnis, my son-in-law.

Q. Then, to the best of your recollection, the title now stands in Frank R. McGinnis?

A. I think it does; yes, sir. I may be a little mistaken. I don't recollect, exactly. I know he has had it in his hands.

Q. He has no interest in it, as I understand?

A. Not at all, sir.

Q. You claim to be the sole owner of the property?

A. Yes, sir.

Q. What had Mr. John Letcher to do with the property?

A. Well, I allowed Mr. McGinnis to turn over—to make
96 that deed over to Mr. Letcher on the ground that Mr. Letcher went on his bond. Mr. Letcher has no claim or title to it at all.

Q. It was placed in the name of Mr. Letcher to enable him to go upon Mr. McGinnis' bond?

A. Yes, sir.

Q. Does it still remain in the name of Mr. Letcher?

A. No; I think it has been settled all right; I think if it has not been it will be.

Q. In other words, you think the bond has been paid?

A. I think so; I think it has. What bond do you mean?

A. The bond on which you said Mr. Letcher went.

A. Mr. Letcher did not have to pay any bond; it was only placed to hom as security.

Q. It was placed to him as security for going upon the bond, as *as* I understand it?

A. Yes, sir.

Q. You think the bond was afterwards——

A. Mr. Letcher hadn't any bond to pay; the business matter was all properly transacted, and I suppose there was no money to pay.

Q. Wasn't it a judgment in the court of appeals for eight or nine thousand dollars that he was on the bond for?

A. No, sir.

Q. Simply a bond for appearance in court?

A. Yes; that's all.

Q. Who was it that paid the judgment in the court of appeals?

A. I couldn't tell you, sir.

Q. You did not?

A. No, sir; I did not.

Q. Nor did not furnish the money?

A. No, sir.

Q. Do you know who did?

A. No, sir; I do not.

Q. You think, then, that Mr. John Letcher has conveyed this property to *to* Mr. Frank R. McGinnis?

A. I suppose so.

Q. Have you never made any inquiry?

A. No; I have not.

Q. You don't know who has title to the property?

97 A. Mr. McGinnis has the deed now; I think Mr. Bagot made the deed over to him. I know he did when he made the deed to Mr. Letcher, so I think that everything is all right with Mr. McGinnis again.

Q. You never made any special inquiry to see?

A. Well, I have talked about it several times, but I never went into the particulars. I know it is there ready for me whenever I want it.

Q. Who occupies the place, Mrs. Bobb?

A. Well, it is rented.

Q. To whom is it rented?

A. I have forgotten the names of the parties that is there; it has changed hands, I know; I know there has been a change made.

Q. How many tenants has there been to the place?

A. Two.

Q. To whom was it first rented?

A. I forget the name.

Q. Who collected the rents?

A. I authorized Mr. Bobb to collect them.

—. Mr. Charles Bobb?

A. Yes, sir.

Q. He collected the rents?

A. Yes, sir.

Q. In what shape did he collect them?

A. In money.

Q. No checks?

A. No.

Q. Do you know what rent is being paid for the property?

A. Well, I don't think they are paying more than two hundred a year. I think it is about that that they are paying; it may be a

little more; I don't know exactly; I think that is about all we got from the first tenant. It is only a portion of the house that is rented and the ground.

Q. Have you ever been on the place?

A. Oh, yes, sir; very often; visited my brother when he lived there.

Q. Who has been paying taxes on the property?

A. I have.

Q. Do you mean that you personally have gone to the collector's office and paid them?

A. No; I have furnished the money.

Q. To whom did you furnish the money to pay them?

A. To Mr. McGinnis.

Q. Mr. Frank R. McGinnis?

A. Yes, sir; paid over two hundred dollars yesterday.

Q. That was for delinquent taxes.

A. Well, I don't know whether it was all delinquent; I don't think it was all delinquent. It might have been back taxes.

Q. Do you mean to say you paid the taxes regularly every
98 year when they became due?

A. Regularly, and away back when Mr. Bird had the property; had to pay delinquent taxes of his.

Q. Do you remember what amount you paid in taxes?

A. All together?

Q. Yes.

A. No; I could not say exactly. I know there was quite an amount of back taxes of Mr. Bird's. I could not say the exact amount.

Q. How were these taxes paid, in money or check?

A. Well, sometimes—I think it was mostly allways cash. I don't know that I ever gave a check. I think it was mostly all cash.

Q. What other money or property did you have at the time when you purchased this Bird loan besides that you have spoken of?

Objected to as immaterial.

A. I think I told you what I had.

Q. You told me all that you had then, did you?

A. I told you what I had. I don't know whether the question was put to me before or after the purchase.

Q. I understood you to say, then, that was all that you had at the time of the Bird purchase?

A. All that I had.

Q. Those three class- of houses?

A. Yes, sir.

Q. Besides some small loans, you say?

A. Yes, sir.

Q. Do you recollect to whom those loans were made?

A. No, sir.

Q. In whose hands were they, Mrs. Bobb—the loans?

A. How do you mean, the notes, &c.?
Q. The notes, &c.
A. I have them all in my possession.
Q. Do you recollect what amounts they were for?
A. No, sir; didn't amount to much. There is a couple of pieces of property that I forgot to state. Th-re is a piece on Pine street and a piece on Chestnut street.
Q. You mean which you have now?
A. Yes, sir.
99 Q. Where, on Pine street, is that property?
A. Between Union and Garrison avenue.
Q. Is it improved?
A. Yes; a house on it.
Q. How long have you had that piece?
A. Well, I could not state. I have had it a long while. I could not tell exactly.
Q. Did you have it at the time you acquired this particular property, the Bird loan?

Defendant's counsel objects to inquiry as to the other property.

A. The rents are more than would have paid for it in a year.
Q. On which property?
A. Of any portion.
Q. Of any portion of it?
A. Yes; for two thousand dollars in cash.
Q. You mean your rents from real estate were more than two thousand dollars in cash?
A. Yes, sir.
Q. Were not those rents used for your own living?
A. Well, I don't pretend to consume all my rents.
Q. Your rents were simply invested?
A. Yes; I will have plenty and use as little as possible in my living.
Q. How long did you say you had owned this Pine-street property?
A. I didn't say how long. I don't know exactly, and I can't say until I refer.
Q. Wasn't that deeded to you by Mr. Charles Boob, that Pine St. piece?
A. Yes; for a consideration.
Q. You remember you purchased it from him?

Objected to as irrelevant.

A. Well, I would not swear whether the rents came from that house or not.
Q. How was — in regard to the Chestnut-street piece? Did they come from that?
A. I suppose, probably, some of it did. That was in charge of Mr. Wolff.
Q. The Hayden piece of property, concerning which you have

spoken and for which you say you received thirteen thou-
100 sand dollars, how much of the loan made upon that Hayden property did Mr. Charles Bobb furnish?

A. I don't know that he furnished any.

Q. You don't think he furnished any?

A. I don't think he did.

Q. You feel sure of that?

A. Well, I am pretty positive he had more than the amount in his hands of my money at the time he made the loan.

Cross-ex'n of Martha E. Bobb.

Cross-examination.

By Mr. CHANDLER:

Q. Mrs. Bobb, when this loan was first made on the Hayden property, it was made for you?

A. Yes; my own money.

Q. It was your money that was loaned?

A. Yes; that was understood.

Q. It was your security that was taken?

A. Yes, sir.

Q. You state that this money, after you were married, you handed over to Mr. Charles Bobb?

A. Yes, sir.

Q. Do you mean that you delivered it to him for his money?

A. No, sir; to invest for me.

Q. He had no personal right in the money?

A. None at all; only what the law gave him, I suppose.

Q. You did not intend that he should have even what the law gave him, did you?

A. Well, I don't know; I wouldn't be that unjust.

Q. Your intention was to reserve it for your separate estate?

A. Yes, sir.

Q. And you had done so continuously?

A. Yes, sir.

Q. Now, the property you say was ultimately bid in by Charles Bobb?

A. Yes, sir.

Q. And afterwards it was conveyed by him to some trustee of yours?

A. Yes, sir; to Mr. Wm. A. Rose, my brother-in-law.

Q. Have you the deed that was made?

A. Yes, sir.

Q. Who wrote that deed that was made by Charles Bobb of this Hayden property to the trustee after it was bid in?

101 A. Mr. John Bobb wrote it at my house, on king's highway.

Q. He knew all about the transaction, did he?

A. Yes, sir.

Q. Drew up the deed?
A. Yes, sir.
Q. And assented to the whole thing?
A. Well, he drew up the deed; there it is.
Q. Well, he had full knowledge of the transaction and of the consideration of the deed, did he?
A. Yes, sir.
Q. He was on amiable terms with the family, was he not?
A. Yes; were all friendly then.
Q. When did you first hear that John Bobb objected to this transaction?
A. Well, I never heard it until lately. When I heard that he had brought that case.
Q. This deed was made the 14th day of November, 1860. It was made at the time it purports to have been made, was it not?
A. Yes, sir.
Q. From the time this deed was made and written up by the plaintiff in this suit, down until quite recently, you never knew that he objected to it?
A. No, sir.
Q. Do you know what reason has led the plaintiff to look on this transaction differently now from what he did then?
A. I guess he has got mad, that's all; I can't tell; spite and selfishness, and all other bad motives.
Q. Now, in speaking of placing this title in Mr. McGinnis and others, you stated that you did it to protect yourself?
A. Yes.
Q. Did you mean to protect yourself against any of your creditors?
A. No, sir.
Q. Against anybody that had a just claim against you?
A. No, sir; I sometimes pay my debts twice; that is a great fault with me.
Q. You desire to protect yourself against unrighteous litigation?
A. Yes, sir.
102 Q. Against persons who had no claim whatever of any kind upon you?
A. Yes, sir.
Q. Now, whoever holds this title holds it for your benefit?
A. Yes, sir.
Q. It is your property, purchased with your money?
A. Yes, sir.
Q. Do you know of any claim, either legal or equitable, that John H. Bobb has upon it?
A. No, sir; I don't know that I owe him anything.
Q. No money that he ever produced or had went into the purchase of it?
A. No, sir; he was not in the city at the time the loan was made on that property; he was in Virginia.
Q. He came home in time, however, to write up this deed?
A. Oh, yes; it was some time after he came home that he wrote

that; after we moved out on the place and made it our home all together, the whole family. I was not as selfish as he was; I allowed them all to live there and never charged them any rent or board, either.

Q. John used to be rather amiable at that time, didn't he?

A. Very pleasant; I thought a good deal of him then.

Q. He drew considerable money from the old gentleman about that time, didn't he?

A. Yes, sir.

Q. He got at one time a good deal of money, didn't he?

A. Yes, he did; his father advanced him and his brother Charles 57,500 dollars at one time; I had no objection to his father advancing that money for him for their benefit.

Q. Did John understand his father's financial condition at the time of this transaction?

A. Well, he had access to all papers and all books and everything and I should think he did. I think he was one would always interest himself in anything of that kind.

103 Q. He really grew up to be almost the head of the family, did he not?

A. Well, I suppose about on an equal footing with his pa; intimate and friendly.

Q. At any rate, he knew all that was going on?

A. Oh, certainly he did.

Q. He knew his father's pecuniary liabilities and resources and whatever disposition of property was made by anybody he acquiesced in and assented to at the time?

A. Yes, sir.

Q. He gave some very valuable advice, too, didn't he?

A. Well, he drew up papers. In one instance he drew up a deed to his sister Cora of property which was in his name at the time—that he had bid in—which belonged to his father, and he conveyed it to his sister.

Q. And his sister knew of the value of it being charged to her?

A. Yes; it was an advancement to her.

Q. He afterwards rather relented from that transaction, didn't he?

A. It was through me that she got it. I proposed to her father to make her an advance after she was married, so that she could have an income of her own.

Q. You say Mr. McGinnis has made some transfer of this property to indemnify Mr. Letcher?

A. Yes; I allowed him to do that.

Q. Is Mr. Letcher a relative of yours?

A. Yes; he is a brother-in-law from my first marriage.

Q. Have you ever heard Mr. John H. Bobb say anything about this trust estate which has been built up here, whether it was a voluntary thing on the part of his father or not?

A. I always heard from the beginning and before my marriage that it was an estate belonging to his wife and children that he had given them.

Q. That Charles Bobb had built up for them?
A. Yes; Charles Bobb.
Q. Do you know anything about this munificent judgment
104 that we have had here growing out of that gift?
A. I have heard of it, and I think it was very unjust after he had done what he had for them.
Q. And it was to reach this property that this suit was brought?
A. I suppose so.
Q. That is your understanding?
A. Yes, sir. John seems to want all the family has got. He is not satisfied with what he has got already, but wants my property. He don't seem to have any pity on me or on his father and his family. John has got no family, and I shouldn't think he would want so much. I have my own family to support, and I have got his sister's family with us, too. I have had her family with — for almost two years that he sent to us; after assuming her support he sent her to us.
Q. This language in the deed that this property shall remain your sole, separate, and individual estate, free from the debts of your husband, was put in here by John H. Bobb, was it not?
A. I didn't know my husband was in debt.
—. This language was put in by Mr. John H. Bobb?
A. Yes; he wrote the deed; I had nothing to do with it. It was written and handed to me.
Q. Now, at the time this deed was made to Charles Bobb your husband was perfectly solvent and had plenty of property of his own, had he not?
A. Yes, sir.
Q. You never invested any money in this property that they speak of in this petition that was derived from this trust fund?
A. No, sir.
Q. Never had any of that under your control?
A. No, sir; never.
Q. Did John advise you how this deed should be drawn? He acted rather in the capacity of attorney, did he not?
A. I think he drew it up just according to his own ideas.
105 I never gave him any directions, and I don't know whether his father did.
Q. The legal aspect of the deed came from John, didn't it?
A. Yes; I suppose he drew it up to suit himself.
Q. I see it is provided here that it shall go at your death to the children and heirs-at-law of the said Martha E. Bobb by her marriage to the said Charles Bobb?
A. Yes, sir.
Q. That was one of the provisions John H. Bobb devised to secure some of it?
A. Yes. Well, I suppose they would have got it all, perhaps, if I should die. I ain't dead yet.

Re-ex'n of Martha E. Bobb.

Re-examination.

By Mr. PLAYER:

Q. Were you present when this deed was drawn?

A. I was in the house, sir; passed through the dining-room once or twice while he was writing it.

Q. Was Mr. Charles Bobb there?

A. I could not say whether he was or not. I suppose he was if it was on Sunday.

Q. It was on Sunday, you say?

A. I say if it was. He was generally at home on Sunday. I could not tell when the deed was drawn—whether at night or day. I recollect seeing John writing it in the dining-room.

Q. Was it not drawn in accordance with the directions of Charles Bobb?

A. Not to my knowledge.

Q. You don't think that he gave any directions?

A. I don't know that he did.

Q. I suppose you are unable to say whether he did or not?

A. Yes. I did not see him about and did not hear him say. It might have been drawn from coppies of deeds. I know there were several deeds on the table—several papers on the table; suppose he had some for reference.

Q. At whose request did John H. Bobb draw up the deed?

A. Not from mine.

Q. Not on your request?

A. No, sir.

106 Q. You had never requested any deed?

A. Well, I expected to have a deed. I was not under obligations to ask for a deed.

Q. You say Mr. Charles Bobb was solvent the time that this deed was made?

A. To my knowledge, he was.

Q. Do you know what property he had at that time, Mrs. Bobb?

A. Well, I think he had money and property both.

Q. Do you know how much in money?

A. No, sir; I do not. I never made any inquiries about his wealth or anything about it.

Q. Do you know what property he had at that time?

A. Well, at that time he had a piece of property on Third street—Third and Elm.

Q. Mr. Charles Bobb had.

A. Yes, sir.

Q. Did he own the whole of it?

A. No, sir; he owned it with a pardner, Mr. George D. Field, I think. They together bought it.

Q. Did he have any other property at that time?

A. I think he had lots in different portions of the city.

Q. Do you remember where?

A. He had lots on Park avenue, I know, and he might have had some in Stodard's addition somewhere. That I think he sold.

Q. How much were those lots worth?

A. Well, I couldn't tell you for I didn't meddle myself that much in his affairs.

Q. Do you know how much Mr. Charles Bobb owed at that time?

A. I don't know that he owed anything.

Q. When you said he was solvent, then you were speaking on the theory that he did not owe anything at the time?

A. I don't think he did, for he was a man that generally paid his debts very promptly.

MARTHA E. BOBB.

Subscribed and sworn to before me this 4th day of April, 1881.

CHAS. E. WELLER,
Notary Public, City of St. Louis.

107 I, Chas. E. Weller, notary public within and for the city of St. Louis, State of Missouri, having qualified as such October 25th, 1878, and my commission expiring Oct. 19th, 1882, do hereby certify that in pursuance of the consent of counsel came before me at the office of Lee & Chandler, S. E. corner 5th and Olive street, in the city of St. Louis, State last aforesaid, Martha E. Bobb, who was by me duly sworn to testify the whole truth of her knowledge touching the matter in controversy aforesaid, and that she was examined and her examination reduced to writing by me in shorthand by consent and afterwards transcribed, read over, and signed by said deponent in my presence on the day and year last aforesaid.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my notarial seal on this 4th day of April, A. D. 1881.

CHARLES E. WELLER,
Notary Public, City of St. Louis, Mo.

Plaintiff's counsel also offers in evidence the deposition of Martha E. Bobb taken in case No. 54595, John H. Bobb *vs.* Louis A. McGinnis, Martha E. Bobb & *al.*

Objected to as irrelevant and incompetent.
Objection sustained.

Plaintiff's counsel next offers in evidence deed from Charles Bobb to William A. Rose, trustee of Martha Bobb, dated 4th day of November, 1861, acknowledged 24th day of December, 1861, recorded 2nd day of October, 1862, all being in the handwriting of John H. Bobb except the signatures of Charles Bobb and Wm. A. Rose, and of the notary public and the recorder's certificate.

Objected to by all the defendants, severally, as irrelevant and incompetent, and that as the deed is not beneficial to Mrs. Martha E.

Bobb no delivery of it to her is presumed, and therefore that there has been no foundation laid for it.

108 Objection overruled and defendants severally and duly excepted to the ruling.

Said deed is read in evidence as follows:

Deed of Charles Bobb to Wm. R. Rose, Tr. of Martha E. Bobb.

This deed made and entered into on this fourth day of November, eighteen hundred and sixty-one by and between Charles Bobb of the county of St. Louis in the State of Missouri party of the first part and William A. Rose of the county of St. Louis and State of Missouri party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of five dollars cash in hand paid, the receipt of which is hereby acknowledged does by these presents, grant, bargain, sell, alien, transfer, convey and confirm unto the said party of the second part as joint tenant and not as tenant in common all that certain tract or parcel of land situate, lying and being in the county of St. Louis and State of Missouri and described and bounded as follows, to wit: Commencing at a point in the center of the king's highway where the south line of the Laflore New Madrid location (now owned by Lucas) crosses the same and being the northeast corner of a tract of four arpens and a fraction of an arpen which was conveyed to J. K. Riechaliska by John Lay about the year 1848, off of the northwest corner of the Delisle New Madrid location and being the nortwest corner of the remainder of said Delisle tract as now owned by said Lay, thence running south seven and a quarter degrees west along the center of said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is a new avenue lately laid out by said Lay, thence south eighty-two and three-quarters degrees east with the north line of said Page avenue five hundred and ninety-one feet six inches to a stone; thence running north seven and a quarter degrees east four hundred and seventeen ($417\frac{3}{12}$) feet three inches to a stone in the north line of the said Delisle tract, thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning, containing six arpens and $\frac{79}{100}$ of an arpen, being the same tract or parcel of land conveyed by John Lay and wife to James H. Hayden by deed dated October 25th 1855,
109 and which deed is recorded in the recorder's office of St. Louis county in Book No. 168, page 321. To have and to hold the said above-described tract or parcel of land with the appurtenances unto the said parties of the second part and to the survivor of him and to the legal representatives, of such survivor and to his assigns forever, in trust, however, and to the express use and interest that said tract or parcel of land shall be forever held for the sole, separate and exclusive use benefit, and behoof of Martha E. Bobb, wife of said Charles Bobb without any account to her said husband, or his sssigns or any liability in any manner for his debts

or liabilities; and in further trust that the said Martha E. Bobb shall forever have and fully enjoy the rents, profits and issues of said tract or parcel of land for which her receipts and acquittances shall ever be a sufficient discharge, the said party of the second part and the survivor of him and the legal representatives of such survivor shall always mortgage or in any other manner, encumber, sell and dispose of in fee-simple and execute and deliver such assurances and conveyances of said tract or parcel of land in fee, or any part thereof in fee or any interest or estate therein as may at any time be required by the said Martha E. Bobb, provided always, and this deed is made and executed upon the express condition that in the event the said Martha E. Bobb shall die before her said husband and the said tract or parcel of land is then undisposed of then the said party of the second part or the survivor of him and the legal representative of such survivor shall mortgage or in any other manner encumber, sell or dispose of in fee-simple and execute and deliver such assurances and conveyances of said tract or parcel of land in fee, or any part thereof in fee or any interest or estate therein as may at any time be required by the said Charles Bobb, and provided also that if said tract or parcel of land is not disposed of as aforesaid then the said tract or parcel of land is to go and vest in children and heirs-at-law of the said Martha E. Bobb by her marriage with the said Charles Bobb and share alike and equally according to law and the said party of the second part covenants to faithfully perform and fulfill the trust herein reposed and created.

In witness whereof, the said parties have hereunto set their hand and seal on the day and year herein first written.

CHARLES BOBB. [SEAL.]
WILLIAM A. ROSE. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-fourth day of December, A. D. eighteen hundred and sixty-one, before me, the undersigned, a notary public, within and for the county aforesaid, duly commissioned and qualified came Charles Bobb, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the uses and purposes therein contained.

[SEAL.] —— ——.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at office, in St. Louis, the day and year last above written.

S. J. LEVI,
Notary Public, St. Louis County, Mo.

Filed and recorded October 2d, 1862.

A. C. BERNOUDY, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State,
111 certify the foregoing to be a true copy of an instrument of writing executed by Charles Bobb to Martha E. Bobb, tr., together with the acknowledgement and date of filing and recording thereof as the same remains on record in my office, in Book 267, page 409.

[SEAL.] Witness my hand and official seal this 27th day of October, 1887.

WM. A. HOBBS, *Recorder.*

Testimony of John L. Frazier.

Plaintiff's counsel then called JOHN L. FRAZIER, who, being duly sworn, testified as follows:

Q. Do you know Martha E. Bobb?
A. Yes, sir.
Q. How long have you known Mrs. Martha E. Bobb?
A. About 35 years.
Q. Did you know her first husband?
A. Yes, sir.
Q. What was his name?
A. Thomas C. Frazier.
Q. He was your brother, was he not?
A. Yes, sir.
Q. At the date of your brother's death did he have any property or estate?

Objected to as irrelevant and incompetent and tending to contradict their own witness, Martha E. Bobb, and that no foundation has been laid for the same in the petition.

The court overruled the objection; to which ruling of the court the defendants, by counsel, then and there excepted.

A. Nothing that I know of; it has been a long time, some years before the war, and, of course, there having been such a length of time since his death, I know but very little of the circumstances.
Q. Your brother's health was bad for some time before his death, was it not?
A. Yes, sir.
112 Q. About how long?

Objected to. Objection sustained.

Q. What was your brother's business?

Objected to. Objection sustained.

Q. Was your brother doing anything for any length of time before his death?

Same objection and ruling.

Q. Do you know who paid the funeral expenses of your brother after his death?

Same objection and ruling.

Q. Do you know what salary your brother was getting before his death?

Same objection and ruling.

Q. Do you know the year that your brother died?
A. Yes, sir.
Q. What year was it?
A. 1885.

Cross-examination declined.

Plaintiffs' counsel offers in evidence papers from James H. Hayden and wife to John Lay, dated October 25th, 1855, recorded in Book 167, page 419, whereby Hayden conveyed this property known as the Hayden place and described by the witness as that place to secure certain notes described in that deed of trust.

Objected to by defendants as irrelevant and incompetent.

Mr. ROWE: The original book, I am informed, which we propose to offer in evidence from the recorder's office, will show upon the margin the satisfaction of the deed of trust of Charles H. Bobb, as the holder and owner of the notes.

Mr. KINEALY: We make no objection to their using the books in place of the deed.

113 The COURT: Is that fact admitted that it was specified on the record?

Mr. KINEALY: I really don't know anything about it. I never have seen it. Whatever is on the record, of course, will cover the whole thing.

Testimony of C. S. Warner.

At this point, by consent, Mr. CHARLES S. WARNER, a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. KINEALY:

Q. Give your name in full.
A. Charles S. Warner.
Q. What is your business?
A. I am paying teller of the Mechanics' bank.
Q. How long have you been in the Mechanics' bank?
A. Been there about 19 years.
Q. Will you be kind enough to state to the court what are your duties?
A. At present I am only paying teller, but I had occupied both positions part of the time. I was both receiving and paying teller at one time.
Q. In 1875 what was your position?
A. I believe I was assistant then; assistant teller.

Q. Will you look at that book (handing bank book to the witness) and state to the court what it is?

A. It is a pass book that we use with our depositors in the business we have with them.

Q. State what pass book that is.

A. It is Mrs. Martha E. Bobbs'.

Q. Will you look at the entries there on these pages. By whom were those entries made, Mr. Warner?

A. Some of them were made by the teller and others were made by the discount clerk.

Q. They were all made by the employees of the bank?

A. Employees of the bank; yes, sir.

114 Q. What does that left-hand page represent?

A. The credits.

Q. What do you mean?

A. The amounts of the parties' credit; they are entered in there.

Q. Are there any dates given there on the margin?

A. Yes; there are dates.

Q. What are those notes?

A. The dates they were entered into their credit.

Q. The several amounts deposited?

A. Yes, sir.

Q. Did Mrs. Martha E. Bobb keep an account with your bank at that time?

A. Yes, sir.

—. And these on the left-hand page indicate what?

A. Credits.

Q. Deposited by whom?

A. By Mrs. Bobb or some one for her.

Q. Will you look at those three checks—one check dated November 20th, 1873; another check dated October 22d, 1875, and another dated November 4, 1875, and drawn apparently on the Mechanics' bank by Martha E. Bobb. I will ask you if you know the signature of Martha E. Bobb.

A. As far as I can remember, that appears to be now—it has been some time since—yes; I think that is the genuine signature; yes; here I see my name certified as teller at that time. I can swear to that.

Q. Can you swear whether or not these are the signatures?

A. Those are the genuine signatures.

Q. All these checks passed through the bank?

A. Yes, sir.

Q. Was money always paid on those checks?

A. No, sir; this one is paid for the note, but these others were paid to other banks.

Q. They represent cash drawn from her account from the bank?

A. Yes; they are certified for the amount.

115 Q. Now, I will ask you one thing more. Do these dates represent the correct dates for the deposits in the bank?

A. Yes, sir.

Q. Did this date represent the direct presentation of that check?

A. Well, this is no doubt on that day. The others came in the day after, it seems.

Q. Is there any marks on these checks?

A. Yes; there is a clearing-house stamp on the back indicating what bank it came from.

Cross-examination declined.

Testimony of Lucy G. Taylor.

Plaintiffs' counsel then called Mrs. LUCY G. TAYLOR, who, being duly sworn, testified as follows:

Q. Your full name is Lucy G. Taylor?

A. Yes, sir.

Q. You are the daughter of Charles Bobb?

A. Yes, sir.

Q. Do you know Martha E. Bobb?

A. Yes, sir.

Q. What relation, if any, is she to you?

A. She is my father's third wife.

Q. John H. Bobb is your brother?

A. Yes; he is my own brother.

Q. Did you know Martha E. Bobb at the time of her marriage to your father?

A. I never knew anything about her until my father brought her to the house.

Q. How old were you, Mrs. Taylor, at that time?

A. I was then 12 years and 2 months.

Q. Did you know anything about Martha E. Bobb's financial condition at that time?

A. I only know what she brought to the house.

Q. Did she have any money or property or means at that time, as far as you know?

Objected to as incompetent and intending to impeach Mrs. Bobb and no foundation laid in the petition for the same.

The COURT: It seems to me that the question is objection-
116 able on the ground that the witness has already answered that she knows nothing about it except what she brought to the house.

Q. Since the marriage have you ascertained or do you know now what Martha E. Bobb had at the time of her marriage to Charles Bobb?

Objected to by defendant Mrs. Martha E. Bobb as being irrelevant and incompetent under the pleadings.

The COURT: Whether she knows anything of it she can state.

To which ruling defendant Mrs. Bobb then and there duly excepted.

Q. Do you know what Mrs. Bobb's financial condition was at the (92)* time of her marriage to Charles Bobb?

A. She was a poor woman.

Q. Do you know a servant that your father and stepmother had named Old Aunt Sally?

A. That servant belonged to my mother.

Q. Did you ever hear any conversation between Martha E. Bobb and Aunt Sally with reference to Mrs. Bobb's financial condition at the time of her marriage to Charles Bobb?

A. Yes; I did.

Q. State what that conversation was.

Objected to by Mrs. Martha E. Bobb and Charles Bobb on the ground that there is no foundation laid for it in the petition and it was irrelevent and incompetent. Objection overruled and said defendants severally and duly excepted.

A. Well, Aunt Sally had been brought up by my mother and still remained at home to take care of us children, as she said, until my father was fool enough to marry again, and then she would leave, and she wouldn't perform any services about the house except what she wanted to do. Mrs. Bobb ordered her to do some menial service that she had never been accustomed to do, 117 such as emptying slops, and she told her she would not do it.

Q. I don't care about that particularly; just give the conversation.

Objected to for reasons last above. Objections overruled, and defendants severally excepted.

A. She told Aunt Sally she could leave the house, and Aunt Sally told her she wouldn't leave the place; that she had a good right there as Mrs. Robb; that the property belonged to her dead mistress and her children, and Mrs. Bobb told her to wait until Mr. Bobb came; that she would have Mr Bobb put her out. She said Master Charlie didn't dare to do it; that the property belonged to Mistress Mary's children, and she was surprised, and said, "Tell me, Sally, all you know about it," and Aunt Sally did tell her. She mentioned other property—the house on Walnut street between 7th and 8th and other property around on 8th street—and Mrs. Bobb said she would tell her father, and if she had known it that she would never have married Charles Bobb.

Q. Did you live with your father on king's highway, on the place known as the Hayden place, at any time?

A. Yes, sir.

Q. Did Martha E. Bobb have a conversation with you and your sister Cora about the financial condition of herself and husband out on king's highway?

[* In pencil in copy.]

Objected to by defendant as irrelevant and incompetent. Objected overruled, and defendants severally excepted.

A. Yes. It came around in the way of a quarrel, as we had a great many family quarrels. My sister and I had to do the work of the house. My sister omitted to take the ashes up out of the parlor grate and kindle the fire, and consequently the fire didn't burn well, and Mrs. Bobb, as she usually did, abused my sister roundly
118 for it, and, of course, we retorted. She told us we had no business there and we had to go out in the world and make a living, and that is the only time my father ever took part against that woman. He told her that she shouldn't turn us girls out. She told us to go to St. Louis and make our living—waived her hand towards the city and said, "Go there; go on the town," and my father said, "You ought not to talk to these helpless girls in that way."

Q. I don't care about that. What did your father say about his wife's financial condition at that time in her presence? What was said by Martha E. Bobb or Charles Bobb in presence of Martha E. Bobb with reference to her financial condition at any time?

Objected to on the ground that the statements of Mr. Bobb, whether made in the presence of Mrs. Bobb or not, are irrelevant and incompetent in this inquiry or in this suit.

At this point the court adjourned until tomorrow, October 26th, at 10 o'clock a. m.

OCTOBER 26TH, 1887—10 a. m.

The court met pursuant to adjournment, when the hearing of the case was resumed as follows:

Mrs. LUCY G. TAYLOR, being duly sworn, testified as follows:

Direct examination continued.

By Mr. ROWE:

Q. Did you have a conversation with Mrs. Martha E. Bobb with reference to her financial condition or with reference to any disposition of the property on the part of your father?

Objected to as irrelevant and incompetent. Objection overruled, and defendants excepted.

119 A. She said my father had loved her better than any of his wives; that he had given her all that she had, even the grave that my mother laid in.

Q. When was this?

A. It was in the fall of 1879.

(By Mr. KINEALY:)

Q. What?

A. All that she had, even to the grave that my mother laid in.

Q. Even the grave?

A. Yes, sir.

Cross-exm. of Lucy G. Taylor.

Cross-examination by Mr. KINEALY:

Q. Where is your mother buried?
A. Buried in Bellefontaine cemetery.
Q. And your father had given her the grave in Bellefontaine cemetery?
A. Given her the whole lot. She said he had given her even the grave that my mother laid in.
Q. How long were you there at that time?
A. I went there in June—17th of June, 1879.
Q. Up to that time you had been living with your father?
A. Yes, sir.
Q. You went on the stand as a witness in that litigation?
A. Yes, sir.
Q. Do you recollect there swearing that your father robbed you and defrauded you?
A. Yes, sir.
Q. There were no good terms between your father and you up to the time you went to Oakland, were there?
A. Yes, sir; he had written me some letters.
Q. You went there with a letter from your brother, did you not?
A. Yes, sir.
Q. Telling you to go and live with old Bobb?
A. I don't know what the language was in the letter.
Q. Wasn't that the expression used?

120 Mr. ROWE: I object to the witness giving the contents of that letter.

Q. You read the letter, didn't you?
A. No, sir.
Q. After you were awhile at Oakland your father removed you from there into a house in Kirkwood, did he not?
A. No, sir; he never removed me.
Q. He got a house for you there and told you to go there?
A. He never got a house for me.
Q. From Mrs. Bobb?
A. No, sir; not for me.
Q. You had a house in Kirkwood, didn't you?
A. No, sir.
Q. Didn't your family move to Kirkwood?
A. My father took the children from me and put them in a hovel.
Q. Well, we will not quarrel about the hovel. At all events, your children were taken to Kirkwood?
A. Yes, sir.
Q. You didn't——
A. He wanted me to stay, but she objected.
Q. She didn't want you to stay?
A. No, sir.

Q. Were you on good terms with Mrs. Bobb?
A. No, sir.
Q. Not continually?
A. Yes; sometimes.
Q. Didn't you go back and break into that house and force your way into the house?
A. Certainly; I had a perfect right to do it.
Q. I want the facts. Did you or did you not do that?
Ans. Yes, sir; I did.
Q. You know this Bird family, don't you?
A. Yes, sir; I do.

Counsel for plaintiff objects as improper.

The COURT: You are entitled to show in a general way the animus of the witness in case of her feelings of friendship or anger, animosity, towards either of the parties; but when that fact is shown you do not want to descend into the minutia of the quarrel between them or to know exactly what the merits of the per-
121 sonal quarrel was. The witness has already said sufficient to show that she has a feeling of animosity towards Mrs. Bobb in this case. The objection will be sustained.

To which ruling counsel for defendant then and there excepted.

Q. Now, I will ask you if you did not, after being evicted from that house claimed by your mother-in-law under a suit by her, again force a way into this house.

Counsel for plaintiff objects. Objection sustained, and defendants severally and duly excepted.

Q. How old were you at the time of the marriage of Mrs. Bobb to your father?
A. I was twelve years old, as I told you yesterday, and two months.
Q. Never mind what you told.
A. Yes, sir.
Q. Where were you at that time?
A. At the time of the marriage?
Q. At the time of the marriage.
A. I was in my father's house.
Q. In your father's house?
A. Well, it was always said it was my father's house.
Q. Are you quite certain you were not in Palmyra, at school?
A. My father brought my sister and myself home and he was married a short time afterwards.
Q. Then you were in the house at the time Mrs. Bobb and your father were married?
A. Yes, sir. He married out at Tippett's and brought her to the house that evening.
Q. How did you feel towards Mrs. Bobb at the time they were married?
A. Just the same as I do now.

Q. And you kept up that feeling as long as you lived there until you were married, did you not?
A. It couldn't be expected to be otherwise.
Q. Did you or did you not?
A. I did.
Q. And Mrs. Bobb was aware of that fact, that you had those feelings of animosity towards her?
122 A. I presume she did.
Q. Didn't you often inform her so?
A. She did everything to make me despise her.
Q. Please answer my question. Didn't you often inform Mrs. Bobb that you had feelings of animosity towards her?
A. I did.
Q. And so there was no doubt that from the time you were twelve years old up to the time that she made this declaration to you, that her father had given you everything she had, you had feelings of bitterness and animosity towards Mrs. Bobb and she was aware of the fact? That is all so, isn't it?
A. I think so.
Q. And you forced your way into that house, didn't you, where she was living?

Counsel for the plaintiff objects.

A. No, sir; I didn't force my way in.

The COURT: The objection will be sustained.

Q. And while you were in the house with her at Oakland were not you continuously quarreling with her?
A. No, sir; she was always quarreling with me.
Q. There was a quarreling with you all the time?
A. She was quarreling with me all the time.
Q. Wasn't that a continual occurrence all the time that you were there at her house, in Oakland—you were always in a perpetual quarrel?
—. No, sir; we were not always in a quarrel.
Q. Did you ever have any friendly moments between you?
A. Yes, sir.
Q. When did they occur, or on what occasion?
A. When I first went there.
Q. You were then friendly?
A. Yes, sir.
123 Q. Was it when you first went there that she made this statement to you, that your father had given her all the property she had?
A. In the fall.
Q. Was it when you first went there that she made the statement to you?
A. I went there in June, and we were friendly up to a couple of months, and then she made that statement to me in the fall of that same summer.

Q. You went there in June and you were friendly up to August. Is that it?

A. Yes, sir.

Q. And in the fall—please be particular what you mean in the fall—what time in the year was that she made this statement?

A. When the leaves were falling off the trees.

Q. That would be about September or October?

A. I suppose it was.

Q. That is, between August and October you were on friendly terms, were you, with Mrs. Bobb?

A. Yes, sir.

Q. Now, will you state to the court the occasion on which she came to make this remarkable statement to you, how it was done, and how it came about?

A. I can tell you how it came about, can I?

Q. Yes.

A. She said my mother was no better than she ought to be, and I told her she was the lowest of the low, and that she was a poor pauper when my father married her. She said my father loved her better than any wife he had, and he had given her everything she had, even to the grave your mother laid in.

Q. Now, what year was that in?

A. 1879.

Q. At that time how many suits had you pending against Mrs. Bobb to take away from her to pay this judgment all the property that she had? Will you just state?

A. I don't know.

Q. You know you had several suits, don't you?

124 A. Yes, sir; but I don't know about that, how many.

Q. You must have felt pretty vexed at the time this conversation was going on, didn't you?

A. Yes, sir; I did.

Q. And Mrs. Bobb felt pretty vexed, too?

A. Yes, sir; she did.

Q. Now, Mrs. Tayler, on the 28th day of July, 1878, the suit was brought of John H. Bobb, Martin D. Luce, etc., against Mrs. Bobb to subject every particular of property that she had to the payment of these judgments on behalf of you and John H. Bobb, John Robb, as assignee of you. You were aware that that suit is pending? It is called "the omnibus suit."

A. I never heard it referred to by that name.

Q. No matter how you heard it referred to. Did you know it was in existence and had been brought?

A. Yes, sir.

Q. And that you were in active sympathy with that suit and wanted to see it won, didn't you?

A. Why, of course I wanted to see all the suits won.

Q. And you know that one of the main points in that suit was to show that Mrs. Bobb had no property; that she acquired all from your father?

A. Yes, sir; and she did acquire it all of my father.

Q. Please answer the question; and now you swear before this court that although you were on terms of animosity with Mrs. Bobb from the time you were twelve years old, that although at the very time you said these expressions were used there was a bitter quarrel going on, and at that very same time a suit was pending, in which you were an active sympathizer with the plaintiff, to subject all of Mrs. Bobb's property to the payment of this judgment, on the ground that she had acquired it from your father, and had no property of her own, that she made that statement to you. Is that what you mean the judge to believe?

125

A. She said that he had given her all that she had.

Q. That will do as far as that is concerned. Mrs. Taylor, in one of your statements yesterday—I don't know whether it was a direct statement or a digression—you swore that this negro, Aunt Sallie, belonged to your mother.

A. She did; my mother claimed her and my mother asked my father to set her free after her death.

Q. I am not asking what your mother was doing. Do you know who Aunt Sallie belonged to before she came into your family?

A. No, sir; I was not born.

Q. You were not born?

A. I don't know when she came into the family; she was about two days after my father married my mother.

Q. After your father married your mother?

A. Yes, sir—my father married my mother.

Q. How old were you in 1838?

A. I was not born then, I tell you.

Q. You were not born in 1838?

A. Yes.

Q. Your father was married to your mother long before 1843?

A. I was born in 1844.

Q. But the negro was then in your family at the time you were born?

A. No, sir; I was not born.

Q. Well, I say she was in your family at the time you were born?

A. Yes, sir.

Q. But now you can't swear that she was your mother's negro, can you?

Counsel for plaintiff objects.

A. I swear it only from her statements, and my father never contradicted her.

Q. Did you ever see that document (producing document).

Counsel for plaintiff objects to bring any document to contradict the witness.

126

A. No, sir.

Mr. KINEALY: I offer this paper in evidence.

Counsel for plaintiff objects.

Mr. KINEALY: It is a bill of sale from the sheriff of this negro—of Sallie to Mr. Charles Bobb—dated January 3d, 1838.

Counsel for plaintiff objects. Objection sustained, and defendants then and there duly excepted to the said action and ruling of the court.

EXHIBIT X.

The bill of sale was marked Exhibit X for identification and is as follows:

Sheriff's Sale.

In virtue and by authority of an execution issued from the office of the clerk of the circuit court of the county of St. Louis, returnable to the March term, 1838, of said court, and to me directed, in favor of Robert B. Fife against William P. Southerland, I have levied upon and seized as the property of said Southerland the property attached at the commencement of said suit and described as follows, to wit, a negro slave, named Sally, aged about 12 or 13 years; and will on Monday, the 15th day of January instant, at the court-house door, in the city of St. Louis, between the hours of nine and five o'clock of that day, sell said slave to the highest bidder for cash, to satisfy said execution and costs.

JAMES BROTHERTON, *Sheriff.*

St. Louis January 3d, 1838.

Received of Robert B. Fief the sum of three hundred
127 dollars, it being the amount of his bid, he being the purchaser of the negro girl this day sold by me, described in and agreeable to the advertisement hereunto annexed.

JAMES BROTHERTON, *Sheriff.*

St. Louis, 15th of January, 1838.

St. Louis, Jan'y 17th, 1838.—Received of Mr. Charles Bobb three hundred and fifty dollars for the above negro girl, purchased by me as above; all my right I convey to the said Bobb.

R. B. FIFE.

By Mr. KINEALY: Mrs. Taylor, when you went to your father's house—look at that paper and see if you did bring that letter with you.

(Witness examines letter.)

A. I brought a letter to my father, but I never opened it.

Q. You don't know that that is the letter?

A. I don't know that that is the one. He gave me a letter to my father and I gave it to him. I never opened it.

Q. You open letters addressed to yourself, don't you?

A. Yes, sir.

Q. Look at that letter and see if it was not addressed to yourself.

A. It may have been addressed to me and come inside of another letter.

Q. How do you know it came inside of another letter. Do you recognize that letter?

A. My brother wrote a letter in St. Louis and sent it to me.

Q. Do you recognize that letter?

A. I recognize this letter as one I took to my father.

Q. How do you recognize this letter as being the one you took to your father?

A. Because it has the same bill-head as the other.

Q. How do you know it is the bill-head if you did not open it?

128 A. I never opened it, but I saw my father have it a- the house.

Q. State to the court how you recognize the letter as directed to your father.

A. My father shook it in my face, saying, That is the letter my brother wrote me.

Q. Look at the letter.

A. I have looked at it and seen all of it I want to.

Mr. Kinealy offers to read the letter in evidence, which is objected to by the counsel.

By the COURT: The object, I suppose, is to let the witness fully identify the letter?

Mr. KINEALY: Yes, sir.

By the COURT: She has identified it and she says -he recognized it.

By Mr. KINEALY: She did not state how she recognized it, and I called her attention to this letter and asked her if she received this letter. She won't look at the letter. I now offer to read this letter, dated St. Louis, January 26th, 1879, from John H. Bobb to Mrs. Lucy Taylor, for the purpose of founding upon it a question.

Said letter was read and is as follows:

Letter of Mr. John H. Bobb to Lucy G. Taylor.

ST. LOUIS, *June 26th*, 1879.

Mrs. Lucy G. Taylor, Victoria, Mo.

D'R LUCY: Enclosed please find five dollars to defray the expense of you & your children to old Bobbs', at Oakland, on the Missouri Pacific railway, which is ten (10) miles from the city.

Yours, &c., JNO. H. BOBB.

P. S.—I sent a couple of messages to your husband to meet
129 you all on the arrival of the Iron Mountain train tomorrow at 5.25 p. m. in accordance with your request.

J. H. B.

Q. Is not that the letter you brought?

Plaintiff's counsel objected.

The court rules that the witness has already stated that this letter was carried to her father and sustains the objection, and defendants then and there severally and duly excepted.

Q. You swore yesterday that you knew Mrs. Bobb was a poor woman at the time of her marriage with your father?
A. Yes, sir.
Q. Will you tell me how you knew that fact?
A. Mrs. Bobb said so herself.
Q. On this occasion you refer to at Oakland?
A. In 1879. We lived then on king's highway.
Q. Well, wherever it was on this occasion you refer to.
A. Mrs. Bobb said, although her first husband was dependent upon a salary, that she lived better with him than she did in the house of my father or that they were better off; although they were poor and dependent upon his salary only, she said that she lived better with him than in the house of my father, who was a rich man.
Q. When did that occur?
A. When we lived on king's highway.
Q. Were you living at Mrs. Bobb's house then?
A. It was not her house.
Q. Were you living with Mrs. Bobb then?
—. She was living with us. She was living in one of the houses of my father, I suppose. I don't know how the property was fixed, or anything. I was too young to know that.
130 Q. How old were you then, Mrs. Taylor?
A. I was 16 years old.
Q. That was 4 years after you came from Palmyra?
A. Yes, sir.
Q. You still have this feeling of enmity towards her?
A. I entertain no love for her whatever.

Redirect Examination by Plaintiff.

Redirect examination by THOMAS J. ROWE, Esq.:

Q. Were you a party to any action against Mrs. Bobb in 1879 of any character? Are you one of the parties to any suit against her as plaintiff that you know of?
A. Well, I cannot say, Mr. Rowe; there are so many suits I don't know how to designate them. I cannot tell. Mr. Kinealy asked me the same question.
—. Mr. Kinealy asked your attention to this omnibus bill?
A. I don't know anything about that.
Q. Look at that record and see if you are party to that suit; if your name appears on it.

Objected to on the ground that the record will show for itself what is on it.

Q. Was there any suit that you know of pending prior to 1879—prior to the time of this alleged conversation at Oakland, wherein you were a party to a suit against Mrs. Bobb?
A. The only thing I recollect of, it seems to me there was to be a decision in the court of appeals of the whole case; that is all I remember of.
Q. Mrs. Bobb was not any party to that suit, was she?

Objected, as record was the best evidence. Objection overruled and defendants duly excepted.

A. No, sir; I don't think she was. It went afterwards to the supreme court of the State. That is all I remember of, when I went home to my father.

131 By Mr. KINEALY: Do you know how many suits or what suits you were a party to since 1878?

A. Mr. Kinealy, you know more about it than I do.

By Mr. KINEALY: Will you be kind enough to give us your opinion; do you know what suits you were a party to against Mrs. Bobb since 1878?

A. I would know if I could speak to my brother about it.

Q. I am asking your recollection now.

A. I would know then what suits there were, if any.

Q. I want to know your recollection. Can you say, of your own recollection, what suits you were a party to?

A. No, sir; I cannot.

By Mr. ROWE: We offer execution No. 283, October term, 1878, John H. Bobb against Charles Bobb *et al.*, and the *nulla bona* returned. This execution was on the judgment in case 13809. Objected to by defendant Mrs. Martha E. Bobb on the ground that it is not an action to which she, Mrs. Bobb, was a party.

Objection overruled, and defendants then and there severally and duly excepted.

Said execution is as follows:

Execution No. 283, *in Case No.* 13809.

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

Whereas, on the 15th day of June, A. D. 1878, at our circuit court, before one of the judges thereof, in a certain cause wherein John H. Bobb is plaintiff and Charles Bobb, William F. Taylor, Lucy G. Taylor, his wife; James K. Taylor and Cora S. Taylor, his wife; George L. Bobb, John D. Stevenson and Hannah Stevenson, his wife; Irene Bobb. Philip M. Bobb, a minor, appearing by Abraham Siegel, his guardian *ad litem;* Charles H. Bobb, a minor,

132 appearing by Abraham Siegel, his guardian *ad litem*, and Matrom D. Lewis, public administrator of the city of St. Louis, in charge of the estate of Charles L. Bobb, deceased, are defendants, it was ordered, adjudged, and decreed that said defendant, Charles Bobb, is liable to the representatives of Charles L. Bobb, deceased, for, and that the defendant Matrom D. Lewis, administrator of the estate of said Charles L. Bobb, do recover from said defendant, Charles Bobb, the sum of eighteen thousand three hundred and eighty-two dollars and fifty-nine cents; and it is further ordered, adjudged, and decreed that the costs of this suit and all proceedings therein be taxed against the said defendant, Charles Bobb; and it is further ordered, adjudged, and decreed that in and as part of the costs to be taxed against said defendant, Charles Bobb, in this cause

all costs heretofore paid by Samuel D. Porter as receiver in this behalf under the orders of this court be included, and that said costs last mentioned be taxed against said Charles Bobb in favor of said plaintiff and the defendant Martrom D. Lewis in the following proportions—that is to say, ($\frac{2}{3}$) two-thirds thereof in favor of said plaintiff, John H. Bobb, and ($\frac{1}{3}$) one-third thereof in favor of said defendant, Martrom D. Lewis, as administrator of the estate of Charles L. Bobb, deceased, and that they respectively have execution therefor.

These are, therefore, to command you that of the goods and chattels and real estate of the said Charles Bobb you cause to be made said sum of eighteen thousand three hundred and eighty-two dollars and fifty-nine cents and also the sum of two thousand
133 nine hundred and three dollars and fifty-nine cents, costs, being the ($\frac{1}{3}$) one-third of amount of moneys paid by said receiver under order of this court, and that you have the same before the judges of said court on the first Monday of October next to satisfy the said judgment and costs aforesaid, and that you certify how you have executed this writ.

Witness Philip Stock, clerk of our said court, with the seal thereof hereunto affixed at office, in the city of St. [SEAL.] Louis, this 6th day of July, in the year of our Lord eighteen hundred and seventy-eight.

PHILIP STOCK, *Clerk.*

No goods, chattels, or real estate belonging to the within-named defendant found in the city of St. Louis whereon to levy this writ and make the within debt and costs or any part thereof.

JOHN FINN, *Sheriff,*
By JOS. GREENWALT, *Deputy.*

St. Louis, Oct. 7th, 1878. N. B. 50 cts.

Execution No. 282 *in Case No.* 13809.

By Mr. ROWE: We also offer the execution No. 282, October term, 1878, in the case of John H. Bobb against Charles Bobb and the return to the execution, it being in case No. 13809.

Same objection, same ruling, and same exception as last above.

Said execution is as follows:

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

Whereas on the 15th day of June, A. D. 1878, at our circuit court, it was ordered, decreed, and adjudged that, by reason of the premises, defendant Charles Bobb is liable to plaintiff, John H. Bobb,
134 in his own right as such beneficiary, and that said plaintiff, John H. Bobb, receiver of said defendant, Charles Bobb, the sum of twenty-seven thousand five hundred and thirty-eight dollars and eighty-three cents, the same to bear interest until paid at the rate of six per cent. per annum.

And the court doth further order, adjudge, and decree that said defendant, Charles Bobb, is liable to the defendant Lucy G. Taylor or her assigns, in respect of her interest as beneficiary under said trust, in the sum of thirty-six thousand two hundred and sixty-three dollars and eighty-three cents, and it appearing to the court that the plaintiff, John H. Bobb, hath, since the institution of this suit by due assignment and conveyance thereof, become the assignee of all and singular the rights, interest, claim, and demand of her the said Lucy G. Taylor, and of the defendant William F. Taylor, if any, of, in, and to the said trust property, and all demands arising therefrom or in any respect thereof against said defendant, Charles Bobb, it is ordered, adjudged, and decreed that the said John H. Bobb do also recover of the said defendant, Charles Bobb, the further sum of thirty-six thousand two hundred and sixty-three dollars and eighty-three cents and interest at the rate of six per cent. per annum until paid.

And it is further ordered, adjudged, and decreed that the costs of this suit and all proceedings therein be taxed against the said defendant, Charles Bobb, and that the said plaintiff, John H. Bobb, and the defendants other than said Charles Bobb do recover of him, said Charles Bobb, all costs herein by them respectively lent out and expended, and that execution issue therefor accordingly.

135 And it is further ordered, adjudged, and decreed that in and as part of the costs to be taxed against said defendant, Charles Bobb, in this cause all costs heretofore paid by said Samuel D. Porter as receiver in this behalf under the orders of this court be included, and that said costs last mentioned be taxed against said Charles Bobb in favor of said plaintiff, and the defendant, Martrom D. Lewis, in the following proportions—that is to say, (⅔) two-thirds thereof in favor of said plaintiff, John H. Bobb, and one-third thereof in favor of said defendant, Martrom D. Lewis, as administrator of the estate of Charles L. Bobb, deceased, and that they respectively have execution therefor.

These are therefore to command you that of the goods and chattels and real estate of the said Charles Bobb you cause to be made the above amounts, being in the aggregate the sum of sixty-three thousand eight hundred and two dollars and sixty-six cents, and also the sum of six thousand five hundred and thirty-nine dollars and forty-five cents, costs and charges in the suit expended, and that you have the same before the judges of said court on the first Monday of October next to satisfy the judgment and costs aforesaid, and that you certify how you have executed this writ.

Witness Philip Stock, clerk of our said court, with the [SEAL.] seal thereof hereunto affixed, at office, in the city of St. Louis, this 5th day of July, in the year of our Lord eighteen hundred and seventy-eight.

PHILIP STOCK, *Clerk.*

No goods, chattels, or real estate found in the city of St. Louis

belonging to the defendant whereon to levy this writ and
136 make the debt and costs or any part thereof.

JOHN FINN,
By JOS. GREENWALT, *Deputy.*

ST. LOUIS, MO., *July 6th*, 1878.

Mr. ROWE: We offer in evidence the petition and answer in case No. 64, St. Louis land court, March term, 1860, Ferdinand Meyer and Bridget Noonan against Charles Bobb and William C. Jameson, filed March 17th, 1860, sworn to April 2d, 1860. We offer the entire record.

Defendant objects to the evidence as having no bearing in this matter whatever; also to any testimony of Mr. Bobb against his wife as incompetent.

By the COURT: The distinction may be a little subtle, but I believe I see the point here. If it were a case in which the Bobb title were being questioned, Mrs. Bobb claiming to derive her title from Mr. Bobb, then there would exist an affirmation of title which would entitle the person contending against that title to show the admissions of the grantor as admissions against the title. But that is not the issue in this case. The plaintiff here does not question the Bobb title and does not question the source from which Mrs. Bobb derived the title to the property in the controversy. There is no dispute about that. The evidence is so far not admissible upon the ground of its being an admission of the grantor. It is at present the admission of Mr. Bobb against Mrs. Bobb's title. I don't think it is competent testimony and I will sustain the objection.

By Mr. ROWE: We offer next in evidence the cards which
137 have been identified. The first one is a card from the office of the recorder of deeds, on its face bearing date November 8th, 1880, and is a receipt for delivery of a deed from McGinnis to McGinnis, dated January 19th, 1881.

Counsel for the defendant objected to the evidence as irregular and incompetent.

By Mr. ROWE: This is offered for the purpose of showing the disguised hand of Mr. McGinnis when he receipted for the other two deeds—the one from Bird to Baggot and one from Baggot to Letcher.

The proof was objected to on the ground that there had been no evidence of disguised handwriting presented here.

By the COURT: I don't think that the court shall undertake to act as expert in an examination of handwriting.

By Mr. ROWE: I offer then the other two receipts, dated July 3d, 1883, for the deeds from Baggot to Letcher and Bird to Baggot, to show that the persons who called for the deeds had the custody of them from the recorder's office.

By Mr. ROWE: I also offer the deposition of Martha E. Bobb taken in this case, No. 56004, filed October 10th, 1887.

This proof was objected to on the ground that the witness was here in the presence of the court and can testify; which objection was sustained by the court.

By Mr. ROWE: I make the offer of the deed of John H. Hayden and wife to John Lahey, a deed of trust, as it appears, re-
138 corded in Book 167, page 419, dated October 25th, 1855.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally excepted.

Deed of John H. Hayden & Wife to John Lahey.

This deed made and entered into this twenty-fifth day of October eighteen hundred and fifty-five by and between James H. Hayden and Eulalie H. Hayden his wife, of the county of St. Louis and State of Missouri, parties of the first part and Christopher C. McClure of the same county and State party of the second part and John Lay of the same county and State party of the third part witnesseth; That the said parties of the first part in consideration of the debt and trust hereinafter mentioned and created and of the sum of one dollar to them paid, by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part all that certain tract or parcel of land situate lying and being in the county of St. Louis and State of Missouri and described and bounded as follows to wit: Commencing at a point in the center of the king's highway where the south line of the Laflore New Madrid location (now owned by Lucas) crosses the same, and being the northeast corner of a tract of four arpens and a fraction of an arpen which was conveyed by said John Lay to J. K. Reicholiska about the year 1848 off of the northwest corner of the Delile New Madrid location and being the northwest corner of the remainder of said Delila New Madrid location as now owned by said Lay, thence run-
ning south 7¼° west along the center of said king's highway
139 four hundred and ten feet six inches to a stone, thence south 82¾° east five hundred and ninety-one feet six inches to a stone in the north line of Page avenue, which is a new avenue, laid out by the said John Lay, thence north 7¼° east four hundred and seventeen feet three inches to a stone in the north line of said Delile New Madrid location, thence north 83° west along said last-mentioned line five-hundred and ninety-one feet six inches to the place of beginning, containing six $\frac{79}{100}$ arpens more or less.

To have and to hold the same with the appurtenances to the said party of the second part and to his heirs, executors, administrators or assigns, or successors forever. In trust, however, for the following purpose: Whereas, the said James H. Hayden hath made and executed his four certain promissory notes to said John Lay, each bearing even date herewith and for value received negotiable and payable without defalcation or discount, the first one for eleven hundred and seventy-eight $\frac{74}{100}$ dollars, payable twelve months after date, the second note for eleven hundred and twenty-one $\frac{70}{100}$ dollars,

payable twenty-four months after date, the third note for one thousand and sixty-four $\frac{67}{100}$ dollars, payable thirty-six months after date and the fourth note for one thousand and seven $\frac{63}{100}$ dollars, payable forty-eight months after date. Now, if the said James H. Hayden shall well and truly pay said promissory notes when the same shall become due and payable according to the several terms and dates and effects then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part, but if the said James H. Hayden shall fail to pay
140 said several notes when due and payable or any one of them or any part thereof, this deed shall remain in force and the said party of the second part, or his successor, or such person, as may be appointed in his stead, may proceed to sell the property hereinbefore described, or any part thereof at public vendue to the highest bidder, at the north-front door of the court-house in the city of St. Louis, Missouri, for cash, first giving at least ten days' public notice of the time, terms and place of said sale and of the property to be sold by advertisement in some newspaper printed and published in the city of St. Louis, Missouri, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof and receive the proceeds of such sale out of which he shall pay first the costs and expenses of executing this trust, including compensation to the trustee for his services and next to pay to said John Lay his heirs, executors, administrators or assigns who may then be the legal holders of said notes, or any of them all such sum or sums of money that may then be due and unpaid on any of said notes. And the remainder, if any shall be paid to the said parties of the first part or their legal representatives. And the said party of the second part, covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Executed in presence of—

JAMES H. HAYDEN. [SEAL.]
EULALIE H. HAYDEN. [SEAL.]
C. C. McCLURE. [SEAL.]

[On margin of folio 139.]

I, the undersigned, assignee of the *cestui que trust.* in the deed of trust recorded on this page, executed by James H. Hayden — wife, acknowledge to have received full satisfaction of said deed of trust, and do forever release the premises and property therein conveyed free from all lien on account of said conveyance.

CHARLES BOBB. [SEAL.]

Witness my hand and seal this 15th day of May, 1867.

Test: JULIUS CONRAD, *Recorder.*

141 STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 26th day of October, eighteen hundred and fifty-five, before me, the undersigned, clerk of the St. Louis county court, came James H. Hayden and Eulalie H. Hayden, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Eulalie H. Hayden, having been by me first made acquainted with the contents of said deed, acknowledged on examination separate and apart from her husband that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her husband.

[SEAL.] Given under my hand and seal of said court the date last aforesaid.

J. THORNBURGH, *Clerk.*

Filed and recorded Nov. 19, 1855.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by James H. Hayden and wife to John Lay's trustee, together with the acknowledgement, date of filing and recording thereof, and the release thereof written on the margin as the same remains on record in my office in Book 167, page 419.

Witness my hand and official seal this 27th day of October, A. D. 1887.

[SEAL.] WM. A. HOBBS, *Recorder.*

142 *John H. Hayden & Wife to Jameson, by Tr.*

Also deed of James H. Hayden and wife, by her trustee, Meyer. Deed of trust to Jameson, recorded in Book No. 191, page 344.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally and duly excepted.

ST. LOUIS, *September 21st*, 1857.

To Ferdinand Meyer, Eqr.

DEAR SIR: You will please, as my trustee, make, execute, and acknowledge a deed of trust upon the real estate conveyed to you as trustee for me, to wit: All that certain tract or parcel of land situate, lying, and being in the county of St. Louis and State of Missouri, described and bounded as follows, to wit: Commencing at a point in the center line of the king's highway where the south line of the Laflore New Madrid location (now owned by Lucas) crosses the same and being the northeast corner of a tract of four

arpens and a fraction *on* an arpen which was conveyed to J. H. Rischaliska by John Lay about the year 1848 off of the northwest corner of the Delisle New Madrid location, and being the northwest corner of the remainder of said Delisle tract as now owned by said Lay, thence running south seven and a quarter degrees west along the centre of said King's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is a new avenue lately laid out by said Lay; thence south eighty-two and three-quarter degrees east with the north line of said Page avenue five hundred and ninety-one feet six inches to a stone; thence running north seven and a quarter degrees east four hundred and seventeen ($417\frac{3}{12}$) feet three inches to a stone in the north line of the said Delisle tract; thence running north eighty-three degrees west along said line five hundred and ninety-one
143 feet six inches to the place of beginning, containing six arpens and $\frac{79}{100}$ of an arpen, being the same property conveyed to you as trustee for me, recorded in the recorder's office of St. Louis county, in Book 182, page 141, to secure to Charles Bobb the payment of a certain promissory note, of even date herewith, for the sum of two thousand five hundred and fifty-one ($2,551.00) dollars, payable one year after date thereof, the said note being drawn by James H. Hayden for value received, negotiable and payable without defalcation or discount, with interest from maturity at the rate of ten per cent. per annum, at the bank of the State of Missouri, and with such other conditions as you may think proper; to which incumbrance James H. Hayden, my husband, doth consent, as will fully appear by his signing this request with me. In witness whereof we have hereto set our hands and seals this 21st day of September, 1857.

EULALIE HAYDEN. [SEAL.]
JAMES H. HAYDEN. [SEAL.]

This deed, made and entered into this twenty-first day of September, eighteen hundred and fifty-seven by and between Ferdinand Meyer, trustee of Eulalie Hayden wife of James H. Hayden and said James H. Hayden and Eulalie Hayden his wife, parties of the first part and William C. Jamison par*ties* of the second part, and Charles Bobb, party of the third part; all of said parties being residents of the county of St. Louis, State of Missouri, witnesseth; that whereas said Eulalie Hayden, wife of said James H. Hayden by and with the consent and approbation of her said husband,
James H. Hayden hath this day in writing directed me as
144 her trustee as aforesaid, to make, execute and acknowledge a deed of trust upon the real estate hereinafter mentioned and described to secure to said party of the third part, the payment of a certain promissory note of even date with said directions in writing aforesaid for the sum of two thousand five hundred and fifty-one ($2,551.00) dollars, payable one year after date thereof, which will more fully and at large appear by reference to the said directions in writing of said Eulalie Hayden aforementioned which is herewith annexed and made a part of this deed.

Now therefore, this indenture witnesseth, that the said party of the first part in consideration of the debt and trust hereinafter mentioned and created and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged doth by these presents, grant, bargain, sell, enfeoff, convey and confirm unto the said party of the second part all that certain tract of land, situated in said county and described with its boundaries as follows to wit; commencing at a point in the centre of the king's highway, where the south line of the Laflore New Madrid location (now owned by Lucas) crosses the same and being the northeast corner of a tract of four arpens and a portion of an arpen which was conveyed to J. R. Rischlaliska by John Lay about the year 1848 off of the northwest corner of the Delisle New Madrid location and being the northwest corner of the remainder of said Delisle tract as now owned by said Lay, thence running south seven and a quarter degrees west along the center of the said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is a new avenue
145 lately laid out by said Lay thence south eighty-two and three-quarter degrees east with the north line of said Page avenue, five hundred and ninety-one feet, six inches to a stone, thence running north seven and a quarter degrees east four hundred and seventeen ($417\frac{3}{12}$) feet three inches to a stone in the north line of the said Delisle tract, thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning, containing six arpens and $\frac{79}{100}$ of an arpen.

To have and to hold the same together with the appurtenances to the said party of the second part and to his heirs and assigns forever. In trust however for the following purposes: Whereas, the said James H. Hayden hath this day made, executed and delivered to the party of the third part a promissory note of even date with this deed for the sum of two thousand five hundred and fifty-one ($2,551.00) dollars payable one year after date thereof for value received, negotiable and payable without defalcation or discount with interest from maturity at the rate of ten per cent. per annum, at the Bank of the State of Missouri.

Now if the said James H. Hayden shall well and truly pay or cause to be paid, the said promissory note when it shall become due and payable, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part, but if default shall be made in the payment of said note or any part thereof or the interest due thereon, or any part of said interest when the said note becomes due and payable then upon such default of the payment of said note this deed shall be and remain in force and the said party of second part or his legal representatives, or in case of his death or absence from the State the sheriff of the county may proceed to sell the said property or
146 any part thereof, at public vendue to the highest bidder at the eastern front door of the court-house in the city of St. Louis, for cash first giving twenty days' public notice of the time, terms and place of said sale and of the property to be sold by ad-

vertisement in some newspaper printed in said city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof and receive the proceeds of said sale out of which he shall pay first the costs and expenses of this trust and next the full amount of said note and the remainder if any, shall be paid to the said party of the first part, said Ferdinand Meyer or his legal representatives, as such trustee as aforesaid of said Eulalie Hayden, and the said party of the second part covenants faithfully to fulfill and perform the trust herein created.

In witness whereof, the said parties of the first part have hereto set their hands and seals the day and year first above written.

FERDINAND MEYER. [SEAL.]
JAMES H. HAYDEN. [SEAL.]
EULALIE HAYDEN. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-second day of September, A. D. eighteen hundred and fifty-seven, before me, the undersigned, clerk of the St. Louis county court, came Ferdinand Meyer, James H. Hayden and Eulalie Hayden, his wife, who are all personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and she, the said Eulalie, being by me
147 first made acquainted with the contents of said conveyance, acknowledged, in an examination apart from he husband, that she executed the same freely and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix the
[SEAL.] seal of said court, at office, in the city of St. Louis, the date last aforesaid.

JOSIAH THORNBURGH, *Clk.*

Filed and recorded Sept. 23, 1857.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by Eulalie Hayden and trustee *et al.* to Charles Bobb, trustee, together with the acknowledgement and date of filing and recording thereof, as the same remains on record in my office in Book 191, page 344.

Witness my hand and official seal this twenty-seventh
[SEAL.] day of October, 1887.

WM. A. HOBBS, *Recorder.*

Also to William C. Jamison, as trustee of Charles Bobb, dated April 9th, 1859, recorded in Book 218, page 204.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally and duly excepted.

Deed of Chas. Bobb by Tr.

This deed, made and entered into on this ninth day of April eighteen hundred and fifty-nine, by and between William C. Jamison party of the first part and Charles Bobb, party of the second part witnesseth,

148 That, whereas, Ferdinand Meyer, trustee of Eulalie Hayden wife of James H. Hayden and said James H. Hayden and Eulalie Hayden, his wife by their deed of trust dated September 21, 1857, and recorded in the recorder's office of St Louis county in Book 191, page 344 conveyed to the said party of the first part, the following-described real estate situated and lying in the county of St. Louis and State of Missouri to wit: All that certain tract of land situated in said county, beginning at a point in the centre of the king's highway, where the south line of the Laflore, New Madrid location (now owned by Lucas) crosses the same, and being the northeast corner of a tract of four arpens and a fraction of an arpen, which, was conveyed to J. K. Keschaleska by John Lay, about the year 1848 off of the northwest corner of the Delisle New Madrid location and being the northwest corner of the remainder of said Delisle tract as now owned by said Lay, thence running south, seven and a quarter degrees west along the center of said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is an avenue lately laid out by said Lay, thence south eighty-two and three-quarter degrees east with the north line of said Page avenue, five hundred and ninety-one feet six inches to a stone, thence running north seven and a quarter degrees, east four hundred and seventeen feet three inches to a stone on the north line of said Delisle tract, thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning; containing six arpens & $\frac{79}{100}$ of an arpen; which said conveyance was made to secure the payment of a promissory note executed by

149 said James H. Hayden bearing even date with said deed of trust, for the sum of two thousand five hundred and fifty-one dollars, payable one year after date to the order of said party of the second part, with interest from maturity at the rate of ten per cent per annum at the Bank of the State of Missouri and, whereas the said note became due and remained unpaid and the said party of the first part in pursuance of said deed of trust and at the request of said Charles Bobb, the owner and holder of said note, caused an advertisement stating the time, terms and place of sale, and also a description of said real estate to be published nineteen times in the Daily Missouri Democrat, a newspaper printed and published in the city and county of St. Louis and State aforesaid; the first insertion being on the nineteenth day of March 1859 and the last insertion on the ninth of April 1859, being more than twenty days' notice prior to the sale as appears by the affidavit of William McKee, the

printer of said newspaper, which said affidavit together with a copy of said advertisement is hereto annexed and made a part hereof and marked "A."

And in pursuance of said advertisement the said party of the first part, on Saturday, the ninth day of April 1859, between the hours of ten o'clock a. m. and 3 o'clock p. m. of said day, expose to sale at public auction, at the eastern front door of the court-house in the city and county of St. Louis and State aforesaid, to the highest bidder, for cash, the said real estate for the purposes mentioned in the said deed of trust, and at said sale, the said party of the second part was the highest, last and best bidder for the said real estate
150 and the same was struck off and sold to him at and for the price and sum of twenty-eight hundred dollars.

Now, therefore, for and in consideration of the premises and the said sum of two thousand eight hundred dollars, cash in hand paid, the rec-ipt of which is hereby acknowledged, the said party of the first part does by these presents bargain, sell, alien, transfer and convey unto the said party of the second part all the right, title, interest, estate in and to the said real estate which the said party of the first part acquired in and by virtue of the said deed of trust; and can sell and convey in and by virtue of the said deed of trust, advertisement and sale.

To have and to hold, the said real estate, with the appurtenances as aforesaid unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereto set his hand and seal at the day and year first herein written.

WILLIAM C. JAMISON. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that William C. Jamison, who is personally known to the undersigned, James R. Lackland, judge of the St. Louis circuit court, within and for the county aforesaid, to be the same person whose name is subscribed to the foregoing deed as a party thereto, this day appeared before me and acknowledged that he executed and delivered the *the* same as his voluntary act and deed for the uses and purposes therein contained.

Given under my hand this sixteenth day of April, eighteen hundred and fifty-nine.

JAMES R. LACKLAND,
Judge of Circuit Court.

151 STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned, a — within and for the county of St. Louis, Wm. McKee, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Democrat" (printed within the said county and State), the newspaper of which he is the printer, for nineteen times, the

first insertion being on the nineteenth day of March and the last insertion on the ninth day of April, 1859, as follows:

March 19, 1859.	April 1.
21,	2.
22,	4.
23,	5.
24,	6.
25,	7.
26,	8.
28,	9.
29,	
30,	
31,	

WM. McKEE.

Sworn to and subscribed before me this 9th day of April, 1859.

[SEAL.] LIBERTY WAITE,
Notary Public.

Printer's fee, 14.00; affidavit, .25—$14.25.

Trustee's Sale.

Whereas Ferdinand Meyer, trustee of Eulalie Hayden, wife of James H. Hayden, and said James H. Hayden and Eulalie Hayden, his wife, by their deed of trust dated on the 21st day of Sep-
152 tember, 1857, and recorded in Book 191, page 344, conveyed to the undersigned trustee the following-described parcel or piece of land, lying in the county of St. Louis, State of Missouri, to wit: All that certain tract of land situated in said county and described, with its boundaries, as follows, to wit: Commencing at a point in the center of the king's highway where the south line of the Laflore New Madrid location (now owned by Lucas) crosses the same, and being the northeast corner of a tract of four arpens and a fraction of an arpen which was conveyed to J. R. Reschaleska by John Lay about the year 1848 off of the northwest corner of the Delisle New Madrid location, and being the northwest corner of the remainder of such Deslisle tract as now owned by said Lay, thence running south seven and a quarter degrees west along the centre of said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is a new avenue,
153 lately laid out by said Lay; thence south eighty-two and three-quarter- degrees east with the north line of said Page avenue five hundred and ninety-one feet six inches to a stone; thence running north seven and a quarter degrees east four hundred and seventeen ($417\frac{3}{12}$) feet three inches to a stone in the north line of said Delisle tract; thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning, containing six arpens and $\frac{79}{100}$ of an arpen; which said deed was made in trust to secure the payment of a certain negotiable promissory note of even date therewith and more particularly described therein and due in one year after the date

thereof; and whereas said promissory note has long since been due and payable and remains unpaid: Now, therefore, public notice is hereby given that the undersigned trustee, at the request of the legal owner and holder of said note and in pursuance of the powers vested in him and in conformity with the provisions contained in said deed of trust, will, on Saturday, the ninth day of April, 1859, between the hours of 10 o'clock a. m. and 3 o'clock p. m., proceed to sell the property hereinbefore described at the eastern front door of the court-house, in the city and county of St. Louis, Missouri, at public auction, to the highest bidder, for cash, for the purposes of executing and fulfilling said trust.

WM. C. JAMISON, *Trustee.*

Filed and recorded April 26, 1859.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing
154 executed by Eulalie Haydon and tr. *et al.* by tr. to Charles Bobb, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office, in Book 218, page 204.

[SEAL.] Witness my hand and official seal this 27th day of October, A. D. 1887.

WM. A. HOBBS, *Recorder.*

Also a deed of trust from John A. Smithers to William C. Jamison as trustee of Martha Bobb, recorded in Book 343, page 23, dated May 15th, 1867.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally and duly excepted.

John A. Smithers to Wm. C. Jamison as Trustee of Martha E. Bobb.

U. S. stamps, $9.00. J. A. S. May 15, '67.

This deed made and entered into this 15th day of May, A. D. eighteen hundred and sixty-seven, by and between John A Smithers of the city and county of St. Louis, Missouri, party of the first part, and William C. Jamison of the same place party of second part and Martha E. Bobb of the same place party of the third part; witnesseth, that the said party of the first part in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, a certain tract or parcel of land, lying and being in the county of St. Louis, State of Missouri described thus: Commencing at a point in the center of king's highway, where the south line of the Laflore New Madrid location (now or

lately owned by Lucas) crosses the same and being the northeast corner of a tract of four arpens and a fraction of an arpen, which was conveyed to J. K. Reichiliska by John Lay about the year 1848,
155 off, of the northwest corner of the Delisle New Madrid location and being the northwest corner of the remainder of said Delisle tract (now or formerly owned by said John Lay) thence running south seven and one-quarter degrees west, along the center of said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue which is two and three-quarter degrees east with the north line of said Page avenue, which is a new avenue laid out by said Lay; thence south eighty-two and three-quarter- degrees, east with the north line of said Page avenue, five hundred and ninety-one feet six inches (591 6) to a stone, thence running seven a quarter degrees east, four hundred and seventeen and $\frac{3}{4}$ feet to a stone in the north line of the Delisle tract aforesaid, thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning, containing six arpens and $\frac{79}{100}$ of an arpen and being the same land conveyed to William A. Rose, trustee of Martha A. Bobb by deed of record in the St. Louis county recorder's office, in Book No. 267, page 409.

To have and to hold the same, with the appurtenances to the said party of the second part, and to his successors hereinafter designated, and to the assigns of him——

NOTE.—The interlineation of the words (New Madrid location and being the northeast corner of the remainder of said Delisle) between the twenty and twenty-first line- from the bottom of this page were written before signature.—W. F. Brinck, notary public.

—and of his successors forever. In trust however for the following purposes: Whereas, the said John A. Smithers, party of the first part,
as part of the purchase-money for said property is justly in-
156 debted to the said party of the third part in the sum of eight thousand six hundred and sixty-six $\frac{66}{100}$ — (say $8,666.66) and has executed and delivered to the said party of the third part, two certain promissory notes of even date herewith each for the sum of four thousand three hundred and thirty-three $\frac{33}{100}$ dollars (say $4,333.33) due respectively in one and two years after date, and are payable to the order of Martha E. Bobb, and are for value received, negotiable and pay*ing* without defalcation or discount and with interest at the rate of six per cent. per annum; and has also agreed with said third party endorsees and assignees to cause all taxes and assessments general and special to be paid whenever imposed upon said property, and within the times required by law. Now, if said notes be paid when they become due, and said agreement concerning paying taxes &c. aforesaid be faithfully performed as aforesaid, then this deed shall be void, and the property hereinbefore conveyed, shall be released at the costs of the said party of the first part, but if default be made in the payment of said notes when they become due or in the faithful performance of said agreement for paying taxes &c. as aforesaid, then this deed shall remain in full force, and

the said party of the second part, or in case of his death, refusal to act or absence from said county or State, when authorized to sell under these presents, and a sale be desired by the holder of said notes, then the sheriff of St. Louis county for the time being, who shall thereupon become his successor to the title of said property and the same become vested in him. In trust for the purposes and objects of these presents, and with all the powers, duties and obligations thereof may proceed to sell the property hereinbefore described, or any part thereof, at public
157 vendue to the highest bidder, at the east front door of the court-house in the city of St. Louis for cash, first giving thirty days' public notice of the time, terms and place of sale, and of the property to be sold by advertisement in some newspaper printed and published in the city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof (a recital wherein of the giving of such notice, and in case such sheriff shall sell, of the happening of any or either the aforesaid events making him successor herein as aforesaid shall be proof thereof) and receive the proceeds of said sale, out of which he shall pay, first the costs and expenses of executing this trust including compensation to the trustees for his services, and next whatever may remain unpaid upon either of said notes if principal, whether due or otherwise and all interest and charges which may have accrued thereon to the day of sale, and the remainder, if any, shall be paid to the said party of the first part or his legal representatives; and the said party of the second part covenants faithfully to perform and fulfill the trust herein created.

In witness whereof, the said party has hereunto set his hand and seal the day and year first above written.

JOHN A. SMITHERS. [SEAL.]

Executed in presence of—

—— ——.

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

Be it remembered that on this first day of May, eighteen hundred and sixty-seven, before me, the undersigned, a notary public, came John A. Smithers, who is personally known to me to be the
158 same person whose name is subscribed to the foregoing instrument of writing as party thereto, and has acknowledged the same to be his act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my seal, at office, in St. Louis, Missouri, the day and year last above written.

WILBUR F. BRINCK,
Notary Public, St. Louis County, Mo.

Filed and recorded May 15, 1867.

JULIUS CONRAD, *Recorder.*

[On margin.]

I, the undersigned, assignee of the *cestui que trust.* in the deed of trust recorded on this page and executed by John A. Smithers, acknowledge to have received full satisfaction of said conveyance and do forever release the premises and property therein conveyed from all liens on account of said conveyance.

Witness my hand and seal this 17th day of May, 1870.

CHAS. BOBB. [SEAL.]

Test: JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by John A. Smithers to Martha E. Bobb's tr., together with the acknowledgment and date of filing and recording thereof, together with the release on the margin thereof, as the same remains on record in my office, in Book 343, page 23.

[SEAL.] Witness my hand and official seal this 27th day of October, A. D. 1887.

WM. A. HOBBS, *Recorder.*

We desire also to offer, of course, the satisfaction on the margin of the record in the two deeds of trust.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally and duly excepted.

Also a deed from William A. Rose, trustee of Martha A. Bobb, to John A. Smithers, recorded in Book 352, page 132, dated May 15th, 1867. This is the king's-highway property.

Objected to by defendants as irrelevant and incompetent. Objection overruled, and defendants severally and duly excepted.

U. S. stamps, $13.00 May 15, 1867.

159 This deed made and entered into this 15th day of May, eighteen hundred and sixty-seven, by and between William A. Rose, trustee of Martha E. Bobb, wife of Charles Bobb and acting herein by her written direction and request; and said Charles Bobb and Martha E. his wife of St. Louis Missouri, party of the first part and Joseph A. Smithers of same place party of the second part, witnesseth:

That the said party of the first part in consideration of thirteen thousand dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, a certain tract or parcel of land lying and being in the county of St. Louis, State of Missouri, described thus: Commence at a point in the center of the king's highway where the south line of the Laflore New Madrid location (now or lately owned by Lucas) crosses the same, and being the northeast corner

of a tract of four arpens and a fraction of an arpen which was conveyed to J. K. Reichiliskie by John Lay about the year 1848, off of the northwest corner of the Delisle New Madrid location and being the northwest corner of the remainder of said Delisle tract (now or formerly owned by said John Lay) thence running south seven and a quarter degrees west, along the center of said king's highway four hundred and ten feet six inches to a stone set on a range with the north line of Page avenue, which is a new avenue laid out by said John Lay; thence south eighty-two and three-quarter degrees east with the north line of said Page avenue five hundred and ninety-one feet six inches (591 6) to a stone, thence running north seven and a quarter degrees east, four hundred and seventeen and $\frac{3}{12}$ feet to a stone in the north line of the Delisle tract aforesaid, thence running north eighty-three degrees west along said line five hundred and ninety-one feet six inches to the place of beginning; contain-g six arpens and $\frac{79}{100}$ of an arpen; and being the same land conveyed to said Rose as such trustee by deed of record in the St. Louis county recorder's office in Book No. 267, page 409.

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To have and to hold the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said party of the second part and to his heirs and assigns forever; the said Charles Bobb and Martha E. his wife, hereby covenanting that they and their heirs, executors and administrators shall and will warrant and defend the title to the premises to the said party of the second part and to his heirs and assigns forever, against the lawful claims of all persons whatsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. Said Martha E. Bobb hereby in writing requests and directs said William A. Rose, her trustee, to execute, acknowledge and deliver this deed.

MARTHA E. BOBB. [SEAL.]
CHARLES BOBB. [SEAL.]
WILLIAM A. ROSE. [SEAL.]

Executed in presence of—

——— ———.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 15th day of May, eighteen hundred and sixty-seven, before me, the undersigned, a notary public for the county aforesaid, came William A. Rose, Charles Bobbs and Martha E., his wife, who are known to me to be the same persons whose names are subscribed to the foregoing instrument as parties thereto, and have acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Martha E. Bobb, wife of the said Charles Bobb, after having been by me first made acquainted with the contents of said instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquished all

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her interest, dower, or otherwise, in the real estate therein mentioned, freely, willingly, and without compulsion or undue influence of her said husband.

(SEAL.) In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

WILBUR F. BRINCK,
Notary Public, St. Louis County, Missouri.

Filed and recorded December 9, 1867.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by Martha E. Bobb & tr. *et al.* to John A. Smithers, together with the acknowledgment and date of filing and recording thereof, as the same remains on record in my office in Book 568, page 132.

Witness my hand and official seal this 27th day of October, A. D. 1887.

[SEAL.] WM. A. HOBBS, *Recorder.*

We desire to offer in evidence again at this stage reports of the referee- Rombauer and Brown for the purpose of showing this indebtedness, which finally culminated in a judgment in case No. 13809.

Objected to on the same ground as before. Objection sustained.

By Mr. ROWE: We will offer the entire record in case No. 13809; that includes everything.

We offer the record and offer to read the pleadings, the
162 referees' report, and the judgment.

Objected to by Mrs. Martha E. Bobb and Charles Bobb, severally, as incompetent and irrelevant, and as being a suit to which Mrs. Martha E. Bobb is not a party.

The court excludes the referees' report.

By Mr. ROWE: Now, then, as the court excludes the referees' report as not being part of the record, I will save my exceptions to that ruling.

The COURT: I will sustain the objection as to the referees' reports and admit the balance of the record proper, save the bill of exceptions and exhibits—that is, the pleadings and the decree.

Counsel for plaintiff excepts to the ruling of the court in excluding the referees' report.

Defendants' counsel excepts to the ruling of the court in admitting balance of record admitted as above.

Said portions admitted are as follows:

Pleadings Admitted in Evidence, Case No. 13809.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that heretofore, to wit, on the 9th day of September, A. D. 1869, there was filed in the office of the clerk *of the clerk* of the circuit court of St. Louis county a petition in the following-entitled cause:

JOHN H. BOBB
vs.
CHARLES BOBB, CHARLES L. BOBB and IRENE BOBB, His Wife; William F. Taylor and Lucy G. Taylor, His Wife; James K. Taylor and Cora S. Taylor, His Wife; George L. Bobb, a Minor.

163 Whereupon a summons issued directed to the sheriff of St. Louis county and returned by him duly executed September 13th, 1869.

And at the December term, 1869, of said circuit court the following proceeding was had in this cause, to wit:

MONDAY, *December 13th*, 1869.

The court having heard and fully considered defendants' demurrer to plaintiff's petition doth overrule the same at said defendants' costs.

And at the February term, A. D. 1870, of said circuit court the following order of injunction issued which, with the sheriff's return thereon, is in words and figures, to wit:

In the St. Louis Circuit Court, February Term, 1870.

JOHN H. BOBB
vs.
CHARLES BOBB, Trustee, & *al.*

WEDNESDAY, *February 9th*, 1870.

The plaintiff, John H. Bobb, and Wm. F. Taylor and Lucy G., his wife, defendants, having filed a petition herein praying that the defendant Charles Bobb, trustee, may be restrained from collecting or using the rents and profits of the real estate mentioned in the petition or improving or interfering in any way therewith, and from negotiating, transferring, or collecting any of the securities mentioned and described in said petition, which petition is duly verified by affidavit: Now, therefore, in view of the premises and the said parties named having given an injunction bond in the penal sum of twenty-five thousand dollars, conditioned according to law, with Wm. F. Taylor, Abraham Siegel, Jacob C. Fruend, Joseph F. Wangler, and Adolph Fisher, as sureties, which is ap-

proved by the court, the court doth order, adjudge, and decree that the said Charles Bobb, trustee, be prohibited and en-
164 joined from collecting or using the rents and profits of the real estate mentioned or improving or interfering in any manner therewith, and from negotiating, transferring, or collecting any of the securities until the further order of this court, and the court doth thereupon order and adjudge that Samuel D. Porter be appointed a receiver to take charge of all the rents and profits and to collect and receive the same, and to take charge and collect all the securities and effects now held by said Charles Bobb, and the court doth further order said Charles Bobb to deliver up all such securities, bonds, or personal estate and effects belonging to the trust now in his possession and control to the said receiver, and the said Samuel D. Porter files a bond as receiver as aforesaid in the penal sum of thirty thousand dollars, with David P. Hull and Jacob S. Merrill, as securities, which bond is approved by the court.

A true copy from the record.

[SEAL.] Attest with seal of court: JOHN LEWIS, *Clerk.*

Executed this writ, in St. Louis county, on the 10th day of Feb'y, 1870, by reading the same to Charles Bobb, trustee.

JOHN McNEIL, *Sheriff,*
By LOUIS SCHWEEN, *D'y.*

And on the same day the plaintiff filed his injunction bond in words and figures following, to wit:

(No bond on file.)

And afterwards, at the February term, A. D. 1870, of said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *February 26th,* 1870.

165 JOHN H. BOBB
vs.
CHARLES BOBB *et al.*

On motion, leave is given and the plaintiff files an amended petition, without prejudice, to the injunction granted herein, and appointment of a receiver heretofore made, and two weeks' time given defendant Charles Bobb to answer.

And afterwards, to wit, on the 16th day of March, 1870, defendant Charles Bobb filed his motion to dissolve the injunction in words and figures following, to wit:

Charles Bobb, one of the defendants in the above-entitled cause, to move the court to dissolve the injunction herein granted for the following reasons:

1. The allegations in the petition are not sufficient in law or equity.
2. Said allegations are not true.

3. For reasons as stated in defendants' answer.
4. For other and sufficient reasons.

LACKLAND, MARTIN & LACKLAND WITH CREWS & LAURIE, *For Pl'ffs.*

And afterwards, to wit, on the 15th day of April, 1870, defendants Cora S. Taylor, James K. Taylor, and Geo. L. Bobb filed their answer in words and figures following, to wit:

JOHN H. BOBB, Plaintiff,
vs.
CHARLES BOBB and Others.

And now come the said Cora S. Taylor and James K. Taylor, her husband, and George L. Bobb and for answer to said petition states that it is true, as they believe, that said Hannah Letcher did,
166 by her deed of the 23d day of January, 1845, convey to the defendant Charles Bobb the said lots and parcels of ground therein and in said petition particularly described, but they deny that the said Charles Bobb took said estate and property upon the trusts as set out in said petition. While these defendants admit that trusts similar to that set forth in said petition appear in said deed, yet they aver and state that said trusts were not the true and real trusts upon which said Charles Bobb took and has ever since held said property, but that the said premises were taken by him and have since *by* held by him as trustee of the said Mary H. Bobb and the children of the said Charles and Mary H. Robb then born and thereafter to be born, but that owing to a want of skill in the scrivener employed for that purpose and under the circumstances set forth and detailed in the subsequent part of their answer by way of cross-bill to the complaint of plaintiff the said trust, instead of being expressed as made for the use and benefit of said Mary H. Bobb and the children of the said Charles and Mary H. Bobb then born and which might thereafter be born, was improperly expressed so as to read as if made for the use and benefit of said Mary H. Bobb and the living children of the said Charles and Mary H. Bobb then born, to wit, the said John H., Charles L., and Lucy G. Bobb; and these defendants, while admitting that the said trust as to all other matters is as is set out in said deed and stated in said petition, except as to the *cestui que trust.* thereunder, state and avers that they are equally entitled in all respects under said deed in all the trusts, benefits, and advantages secured thereby as the said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor, and the said grant was made to said trustee for and intended for them by those making the grant and creating the trust equally with the said John, Charles,
167 and Lucy, which failed to be carried out by a clerical inadvertance or mistake of the scrivener who prepared said deed.

Defendants deny that their interest in said real estate is as stated in said petition, but aver that they each own and are entited to an undivided fifth part thereof.

And these defendants, further answering, by way of a cross-bill, state that on the 18th day of April, 1843, at the earnest and per-

sistent solicitations and importunities of their said mother, Mary H. Bobb, who was then possessed of a morbid and unfounded fear that she and her children then born and to be born would come to *to* poverty and want, said Charles Bobb, the father of said Cora and George L. Bobb, conveyed, by a deed referred to as Exhibit No. 1 in this answer to said Charles Bobb, the real estate described in said first count in said amended petition to Hannah Letcher for a nominal consideration of ten thousand dollars.

That said Hannah Letcher paid nothing for said real estate and said Charles Bobb received nothing whatever therefor; that afterwards, on the 23d day of January, 1845, for a nominal consideration of six thousand dollars said Hannah Letcher conveyed said real estate mentioned in said first count back to said Charles Bobb in trust for the use of the said wife, Mary H., Charles L., John H., and Lucy G. Bobb.

That said Hannah Letcher received no consideration for the conveyance of said real estate, and that neither the beneficiaries under said deed of trust nor said Charles Bobb ever paid said Hannah Letcher anything for making said conveyance, and it was perfectly understood that said Hannah Letcher was to pay nothing for said real estate and was to receive nothing for the same.

168 These defendants aver that all of said real estate was Charles Bobb's, made by his own labor, and that he, said Charles Bobb, acquired no property whatever by his wife, Mary H., on his marriage with her. The real consideration for the conveyance made by him of said real estate to Hannah Letcher, dated April 18th, 1843, and her conveyance of the same back to said Charles Bobb, in trust, dated January 23d, 1845, was to gratify the morbid and remove the unfounded fears of want and starvation entertained by the said Mary H., and for the further purpose of making a provision for the support and maintenance *for* the said Mary H. during her natural life and her children then, on said January 23d, 1845, born of his body and thereafter of his body to be born, and for no other consideration whatever; that said deed of trust executed by said Hannah Letcher, dated 23d January, 1845, was drawn by a justice of the peace named Frederick Kretschmar, who was ignorant and unlearned in the law, and that Hannah Letcher and Mary H. and said Charles Bobb were also ignorant and unlearned in the law; and a mistake was made by said Kretschmar in drawing said deed of trust in this, that said deed of trust was drawn by said Kretschmar so as to convey said real estate by said Hannah Letcher to said Charles Bobb for the use of said Mary H., Charles L., John H., and Lucy G. Bobb by name, the three last-named persons being children of the body of said Mary H. born at the date of said deed of trust, excluding any children which might be born of the body of the said Mary H. subsequent to the execution of said deed of trust, which was not the intention and meaning of the parties executing the same.

That they, the said Cora S. Bobb, now Taylor, and George L. Bobb were born of the body of said Mary H. subsequently to the

execution of said deed of trust, and by reason of the mistake aforesaid are excluded from all benefits under the same.

169 That by reason of the mistake aforesaid no provision was made in said deed of trust for said Cora S. and George L. as was intended to be done and as was supposed to have been done.

That none of the parties to said deed of trust knew or became aware of said mistake in said deed of trust until long after it had been executed and recorded in the recorder's office of St. Louis county; and these defendants aver that it was the object, intention, and desire of the said Hannah Letcher and of said Charles Bobb in making said deed of 18th of April, 1843, and said deed of trust of January 23d, 1845, and also the desire of the said Mary H., at whose request and for whose gratification they were made, to make provision and settlement for the maintenance and support of said Mary H. and her children then born and thereafter to be born of her body, including said Cora S. and George L.

And the said Hannah Letcher and the said Mary H. and said Charles Bobb at the time of the execution of the said deed of trust in truth and in fact supposed and believed that the operation and effect of said deed of trust was to convey said real estate therein described to said Charles Bobb, in trust for the use and benefit and as a settlement and provision for the support and maintenance of said Mary H. and of all the children then born and thereafter to be born of her body, including said Cora S. and George L., which was the intention and purpose of the parties aforesaid in making and executing said deed and said deed of trust.

And the said Mary H., Hannah Letcher, and said Charles Bobb in truth and in fact remained under and continued to entertain such supposition and belief from the date of said deed of trust up to and long after said deed of trust was executed and recorded.

These defendants pray that said Hannah Letcher, now
170 Hannah Stevenson, and her husband, John D. Stevenson, be made parties to this suit, and that the said mistake in said deed of January 23, 1845, be corrected and reformed in accordance with the true intent, object, and desire of the parties aforesaid by the judgment and decree of this court, so that said real estate described in said deed of trust and all rents and profits and issues arising therefrom from the date of said deed of trust be held in trust for the use and benefit of all five of said children born of the body of the said Mary H., to wit, said Charles L., John H., Lucy G., Cora S., and George L. Bobb, share and share alike, subject to the life estate of the said Charles Bobb, as tenant by the curtsey and that portion of the equitable estate in said property of which his said wife, Mary H., died seized.

GLOVER AND SHEPLEY,
Att'ys for G. L. Bobb and Cora S. and James L. Taylor.

And afterwards, to wit, at the June term, 1870, of said court, the following further proceedings were had in said cause, to wit:

WEDNESDAY, *June* 22*d*, 1870.

Now, at this day, come the parties, by their respective attorneys, and the court, having duly heard and considered the motion of Charles Bobb, one of the defendants herein, to dissolve the injunction heretofore granted in this behalf, and after hearing the arguments of counsel thereon, doth order that said motion be overruled.

The court, having also duly heard and considered the demurrer of said plaintiff to the answer of said defendant, Charles Bobb, and being now sufficiently advised of and concerning the premises, doth order that the same be overruled.

And afterwards, on the first day of November, 1870, the plaintiff, by leave of court first had and obtained, filed his second amended bill in words and figures following, to wit:

171 In the Circuit Court of St. Louis County, October Term, 1870.

JOHN H. BOBB, Plaintiff,
vs.
CHARLES BOBB, CHARLES L. BOBB, and IRENE BOBB, His Wife; William F. Taylor and Lucy G. Taylor, His Wife; James K. Taylor and Cora S. Taylor, His Wife; George L. Bobb, a Minor; John D. Stevenson and Hannah Stevenson, His Wife, Defendants. } No. 13809.

STATE OF MISSOURI, *County of St. Louis,* } *ss*:

John H. Bobb, plaintiff, comes, and, by leave of court, for an amended petition, says:

That by an answer of John D. Stevenson and Hannah, his wife, formerly Hannah Letcher, to the cross-bills of Charles Bobb, George L. Bobb, and James K. Taylor and Cora S. Taylor, a state of facts is developed of which the plaintiff was ignorant at the time of his filing the original and amended petition in this cause, and that the answer of said Hannah Stevenson shows that the relation of trustee and *cestui que trusts.* between said Charles Bobb and the said plaintiff commenced before the deed of January 23d, 1845, set forth in the original petition, and the plaintiff therefore states—

That on or about the eighteenth (18th) day of April, A. D. eighteen hundred and forty-three (1843), the said Charles Bobb, by his deed of that date and for a consideration of the sum of ten thousand dollars ($10,000.00) expressed in said deed, conveyed to Hannah Stevenson, then Hannah Letcher, the following-described real estate in the city of St. Louis, Mo., to wit:

172 1st. A lot of ground containing thirty-five feet (35) on Walnut street by one hundred and thirty-two (132) feet deep, bounded east by property belonging to the heirs of Turdy, on the west by property of Edward Brooks, and the south by Walnut street, on the north by an alley, and containing on said alley thirty-five (35) feet.

2d. A lot of ground commencing at the northeast corner of Walnut and Seventh streets, containing on Walnut street seventy-four (74) feet by one hundred and thirty-two (132) feet deep, bounded east by property of Edward Brooks, on the west by Seventh street, on the south by Walnut street, on the north by an alley, and containing seventy-four (74) feet in the rear, both said lots being in block number one hundred and thirty-two (132) and being part of a lot of ground conveyed by Isaac A. Letcher and wife to Charles Bobb by deed dated the eighteenth (18th) day of January, eighteen hundred and twenty-seven (1827), recorded in Book S, page 219, at the recorder's office of St. Louis county.

3d. A lot of ground commencing at a point distant from the south side of Market street two hundred and ninety (290) feet, and from the west side of Seventh street three hundred and twenty (320) feet, which gives the southeast corner of the lot; thence running west on the north side of Walnut street eighty (80) feet; thence north one hundred and thirty-six (136) feet to an alley; thence along on the south side of said alley eighty (80) feet; thence south one hundred and thirty-six (136) feet to the point of beginning, being in block number one hundred and eighty-nine (189).

4th. A lot of ground beginning one hundred and five (105) feet west of Eighth street on Walnut street at a point being two hundred and ninety (290) feet distant from Market street; thence
173 westwardly forty-five (45) feet on Walnut street; thence northwardly one hundred and thirty-six (136) feet to an alley; thence eastwardly on said alley forty-five (45) feet; thence southwardly parallel with Eighth street one hundred and thirty-six (136) feet to the place of beginning, said lot being in block one hundred and eighty-nine (189) and being part of a lot of ground conveyed by Isaac A. Letcher and wife to said Charles Bobb by deed dated the tenth (10th) day of December, 1835, recorded at the aforesaid recorder's office in Book Y, page 468 and following.

5th. Lot number five in the subdivision of lots laid out by Joseph Charless, between Market street and Clark street and Tenth and Eleventh streets, of the city of St. Louis, Mo., all of which will appear more fully, reference being had to the plat of said subdivision or addition on file in the recorder's office of the county of St. Louis, said lot having a front of thirty (30) feet on Market street and running back one hundred and thirty-five (135) feet to an alley, bounded north by Market street, east by lot number four (4), south by an alley, and west by lot number six (6), it being the same lot of ground conveyed by Rufus S. King to said Charles Bobb and Henry Parker by deed dated 23d day of November, 1841, recorded in said recorder's office in Book V No. 2, page 452, and right, title, interest, and estate of said Parker in said lot being by him conveyed to said Charles Bobb by deed dated 10th day of December, 1842.

6th. A lot of ground commencing at a point two hundred and seventy (270) feet from the west side of Seventh street, and from the south side of Market street one hundred and fifty-four (154) feet, which gives the northwest corner of the lot, thence running east

sixty-seven (67) feet; thence south twenty (20) feet; thence
174 west and parallel with the said north line sixty-seven (67) feet; thence north on the west side of Eighth street twenty (20) feet to the place of beginning.

7th. A lot of ground commencing at a point twenty-two and a half (22½) feet from the corner of Walnut street, on the east side of Eighth street, thence east and parallel with said Walnut street sixty-seven (67) feet; thence north forty-five and a half (45½) feet; thence west sixty-seven (67) feet; thence south on the east side of Eighth street forty-five feet and a half to the place of beginning.

8th. Two lots of ground known and distinguished on a map of Charless' addition to St. Louis by the numbers one (1) and two (2), situated at the corner of Market and Tenth streets and bounded and containing as follows, to wit, each lot being thirty (30) feet front on Market street and thirty (30) feet in rear on an alley, being together (60) feet front and sixty (60) feet rear, and the whole in length on each side one hundred and thirty-five (135) feet, they being the same lots conveyed by Townsend N. Underwood and Emily, his wife, of the city of New York, to said Charles Bobb by deed dated the 2d day of March, 1842, recorded at recorder's office of St. Louis county aforesaid, in Book V No. 2, page 481.

9th. A lot of ground commencing at a point on the north side of Walnut street, distant one hundred and fifty-nine (159) feet from the west side of Seventh street, thence running north and parallel with said Seventh street one hundred and thirty-six (136) feet to an alley; thence west along the south side of said alley forty-four (44) feet; thence south one hundred and thirty-six (136) feet; thence east on Walnut street forty-four (44) feet to the point of beginning, being in block No. 185. A copy of said deed is on file among the papers in this cause, and a copy of the same is also filed herewith, marked Exhibit J. H. B. No. D.

175 That the consideration named in said deed was the sum of ten thousand dollars ($10,000) and the real estate therein described, although conveyed absolutely to the said Hannah in fee-simple, yet that it was fully understood and agreed at the time of the making and delivery of said deed that the said Hannah was to hold the sa-d real estate in trust for the separate use and benefit of Mary H. Bobb, then the wife of said Charles Bobb, and of her children then living, to wit, the plaintiff, John H. Bobb; the defendants Charles L. Bobb and William H. Bobb, since deceased.

That said deed was made and executed about the 18th day of April, A. D. 1843, and that on the day of the delivery of said deed to the said Hannah Letcher she, the said Hannah Letcher, handed and delivered to the said Charles Bobb, in payment of the consideration of the sum of ten thousand dollars ($10,000) expressed in said deed, a bag of silver coin and other money, the exact amount of which the plaintiff cannot state, but it was understood that it was in full payment of the consideration named in said deed, and that the money so paid was furnished and given to the said Hannah Letcher by John Bobb, Sr., the father of said Charles Bobb and grandfather of the plaintiff; and by the direction of said John Bobb,

Sr., the said Hannah paid said money to said Charles Bobb as full and complete payment of the consideration expressed in said conveyance, and upon the payment of said consideration the said Charles Bobb delivered said deed.

That it was fully understood between the said Hannah Letcher and the said Charles Bobb and his wife, Mary H. Bobb, that the said Hannah was to hold the legal title of said lots and lands for the separate use of said Mary H. Bobb and her children, and that the said Charles Bobb was to undertake the care and man-
176 agement of the said real estate so conveyed to said Hannah for the best interests of the parties beneficially interested therein, to wit, Mary H. Bobb and her children then living, Charles L. Bobb, John H. Bobb, the plaintiff, and William H. Bobb; and in accordance with said agreement said Charles Bobb did solely manage and control said real estate and collected the rents, issues, and profits thereof.

That the said Hannah was a cousin of the said Mary H. Bobb, and at the date of said deed of April 18th, 1843, spent most of — time in the family of said Charles and Mary H. Bobb; that from time to time said Charles Bobb made sales of portions of said real estate, and by his direction the said Hannah Letcher executed deeds to the purchasers for the lands so sold and gave them to said Charles Bobb, who received the purchase-money paid for the same and the notes and deeds of trust given for the deferred payments and collected the said notes and the amounts due thereon; that in pursuance of said trust and agreement the said Charles Bobb sold to John J. Anderson the lot on Walnut street firstly described in this amended petition, and the said Hannah executed to said John J. Anderson a deed for said lot, dated June 17th, 1844, a copy of which is on file, marked "H. L." No. 6, and the said Anderson executed his ten promissory dates, each for the sum of two hundred and forty dollars ($240.00), payable respectively in one, two, three, four, five, six, seven, eight, nine, and ten years after date, with interest at the rate of seven per cent. per annum, secured by deed of trust upon said premises so sold. A copy of said deed of trust is herewith filed, marked "Exhibit J. H. B. No. E."

That in pursuance of said trust and agreement and at the request of said Charles Bobb the said Hannah Letcher executed a declaration of the trusts attached to said notes and deed of trust of
177 said Anderson by deed dated June 27th, 1844, a copy of which is on file with the original petition, marked Exhibit "C" to plaintiff's original petition, and thereby conveyed said notes in equal shares to said Mary H. Bobb, Charles L. Bobb, William H. Bobb, and the plaintiff, John H. Bobb, which deed was delivered to said Charles Bobb as the active agent in the management of said trust, and the said Charles Bobb, as trustee for said beneficiaries and natural guardian of said infants at said time, took possession of said notes and held them for the benefit of and in trust for said beneficiaries and subsequently collected the amount of said notes, with the interest due thereon, and like trust for said parties, the owners thereof, the said Charles being the father and natural guardian of

said Charles L., William H., and John H. Bobb; that in further pursuance of said trust and agreement the said Charles Bobb sold to one Henry Deppe lot one (1), in Charless' addition above described, for the sum of twelve hundred dollars ($1,200.00), and the said Hannah Letcher executed to said Deppe a deed for said lot, dated October 27th, 1843, recorded in Book E No. 3, page 216, a copy of which is on file, marked Exhibit H. L. No. 1, and said Deppe executed his promissory note, secured by deed of trust upon the premises sold, payable ten years after date, with interest at seven per cent., payable semi-annually, which said note was paid to said Charles Bobb, who acknowledged satisfaction thereof February 25th, 1848. A copy of said deed of trust, with the entry of satisfaction thereon, is on file, marked Exhibit H. L. No. 2.

That in further pursuance of said trust and agreement the said Charles Bobb sold to one John B. Rhode lot two (2), in Charless' addition above described, and the said Hannah Letcher executed a deed to said Rhode, dated October 27th, 1843, recorded in
178 Book E No. 3, page 217, for the consideration of twelve hundred dollars ($1,200), a copy of which is on file, marked Exhibit H. L. No. 3, and the said Rhode executed his promissory note, secured by deed of trust upon said premises, payable ten years after date, with six per cent. interest, payable semi-annually. A copy of said deed of trust is on file, marked Exhibit H. L. No. 4.

Said Rhode sold said lot No. two (2) to said Deppe, and said Charles Bobb, being the trustee named in said deeds of trusts of said Deppe and Rhode, by his deed of release acknowledged payment of said notes of Deppe and Rhode and by his deed dated March 16, 1849, released to said Deppe said lots one and two, in Charless' addition. A copy of said deed of release is on file, marked Exhibit H. L. No. 5.

That after the execution of said deed of April 18th, 1843, the defendant Lucy G. Bobb, now Lucy G. Taylor, was born, in the year 1844, and after the birth of said Lucy, William H. Bobb, one of the beneficiaries under said deed of April 18, 1843, died an infant and without issue, leaving as his heirs and distributees his father, the said Charles Bobb; his mother, Mary H. Bobb; his brother, Charles L., and the plaintiff, John H. Bobb, and his sister, the said Lucy G., now Lucy G. Taylor, wife of the defendant William F. Taylor.

That in the month of January, 1845, the said Hannah Letcher, being about to intermarry with John D. Stevenson, one of the defendants to the cross-bills of the defendants Charles Bobb, George L. Bobb, James K. Taylor, and Cora S. Taylor, at the request of Charles Bobb and his wife, Mary H. Bobb, came from Franklin county, where she was then residing, to St. Louis and there
179 transferred the legal title to the lands above described remaining unsold to the said Charles Bobb and by said deed declared and stated the trusts under which said lands were held by her and by which they were to be held by the said Charles Bobb as trustee, and the said Charles Bobb caused to be prepared a deed of trust setting forth said trusts, and at the request of the said Charles and Mary H. Bobb she, the said Hannah, executed and delivered

to him a deed, dated January 23d, 1845, which was duly recorded, a copy of which was filed in this cause with plaintiff's petition, marked Exhibit "A."

That in and by said deed the said Hannah Letcher conveyed to said Charles Bobb the several pieces or parcels of land hereinabove described except the three tracts hereinabove stated to have been sold and conveyed by said Hannah Letcher.

That by said deed an express trust was declared for the sole use, benefit, and behoof of Mary H. Bobb, wife of Charles Bobb, and of the children of said Charles and Mary H. Robb, to wit, Charles L., John H., the plaintiff, and Lucy G., now Lucy G. Taylor, and to their heirs, executors, administrators, and assigns forever; that they, the *the* said beneficiaries, might have, hold, and enjoy the same, with all the rights, improvements, buildings, &c., separate from said defendant Charles Bobb, their respective husband and father, as their own sole, individual, and exclusive property, and in and by said deed it was further provided that the said Charles Bobb, trustee as aforesaid, should hold said property for the sole benefit of said Mary H. Bobb, his wife, and for the said Charles L. Bobb, John H. Bobb, and Lucy G. Bobb and to their heirs, and that said Charles Bobb should obey their written instructions in all things relating to
180 said property; that he should rent, lease, mortgage, sell, or dispose of the same or any part thereof for such consideration and to such persons as they, the said beneficiaries, their heirs or assigns, should in writing direct, and that the said Charles should pay over to said beneficiaries or to their order the rents and profits and monies accruing from such disposition of said property or any part thereof, and that generally and in all things the said Charles should faithfully and according to the true intent and meaning of said instruments discharge the trust therein created, all of which will more fully appear by reference to said deed.

That of the lots and parcels of land conveyed to said Hannah Letcher as trustee by said deed of April 18th, 1843, the lots which had been sold to said Anderson, Rhode, and Deppe were omitted and were not conveyed by said deed of said Hannah to said Charles, dated January 23d, 1845, but the proceeds of the sales of the said property were received and held by said Charles as trustee for the parties beneficially interested in said lands and as father and natural guardian of said infant children.

That said deed of January 23d, 1845, was signed and acknowledged by Charles Bobb as trustee, and that said deed was duly recorded in the records of St. Louis county.

That at the date of said deed of the said Charles Bobb to the said Hannah Letcher, dated April 18th, 1843, there were buildings and improvements erected upon some of the lots thereby conveyed, producing large rents and profits, and that other lots were leased upon ground rents, and that subsequently from the said rents and profits and from proceeds of sales from portions of said property said defendant Charles erected other buildings and improvements,
181 from which large rents and profits were received by said Charles Bobb, for which he became accountable to the parties bene-

ficially interested in said real estate and the proceeds of sales thereof; but when said buildings were erected or what rents and profits were received by said Charles Bobb this plaintiff cannot state, as at the date of said deeds he was an infant of tender years; but he avers that all the rents, issues, and profits of said lands and all the proceeds and sales thereof and of any and every portion of the same were and have been received and collected by the said Charles Bobb from the said April 18th, 1843, down to the commencement of this suit and without any full account being kept thereof by said Charles Bobb or rendered to the parties beneficially interested in said real estate.

That said Mary H. Bobb died May 18th, 1853, leaving as her heirs and distributees the plaintiff and the defendants Charles L. Bobb, Lucy G. Taylor, Cora S. Taylor, and George L. Bobb, so that at the death of the said Mary H. the plaintiff became entitled to three-tenths ($\frac{3}{10}$) of said real estate, Charles L. Bobb to three-tenths ($\frac{3}{10}$), Lucy G. Bobb to three-tenths ($\frac{3}{10}$), and the said Cora S. to one-twentieth ($\frac{1}{20}$) and the said George L. Bobb to one-twentieth ($\frac{1}{20}$).

That on March 6th, 1854, the said defendant Charles, as trustee and as guardian and father of his said children, and the plaintiff, John H., and the said Charles L., Lucy G., and Cora S. Bobb and George L. Bobb instituted their suit against the said Hannah Letcher and her husband, John D. Stevenson, to procure a reformation of said deed of January 23, 1845, and to have it declared that as trustee the said Charles had authority and power to sell said lands or any of them as in his judgment might be the best for the interest of the parties beneficially interested, and in the record
182 of said suit, being No. 135, returns to March term, 1854, of the St. Louis land court, it was declared that the said Charles L., John H., and Lucy G. each owned the equity of an undivided three-tenths ($\frac{3}{10}$) of the lands conveyed and described in said deed of January 23, 1845, and the said Cora S. and George L. each one-twentieth ($\frac{1}{20}$), and by the decree in said cause said deed was reformed so as to declare that said Charles could sell at his own discretion, and by the petition in said cause it was alleged and declared that it was the avowed intention and object of said parties to said deed of trust (meaning said parties to said deed of trust of January 23d, 1845) and so understood by and between them before the execution of said deed as aforesaid that the said real estate hereinbefore described should be conveyed by the said Hannah to the said Charles Bobb, as trustee, for the sole, separate, and exclusive use, benefit, and behoof of the said Mary H. Bobb, Charles L., John H., and Lucy G. Bobb, their heirs and assigns forever.

That said Charles collected rents from part of said lot seventhly described in said deed of said Charles to said Hannah Letcher at the rate of $28.12 per annum, payable semi-annually from April 15th, 1843, to March 17th, 1848, when under decree of the circuit court the title to the same was vested in E. C. Bosworth upon payment of $405.00, which was paid to said Charles Bobb.

That said Charles Bobb sold the other part of said lot 7thly described in said deed to Samuel H. Speilman for the sum of $1,000,

which was paid to the said Charles on or about the 25th July, 1854, with ten per cent. interest semi-annually from October 1, 1846.

That on or about October 14th, 1853, said Charles sold said lot fifthly described in the said deed to Hannah Letcher to one D. H. Wastendieck for the sum of four thousand dollars ($4,000.00),
183 one thousand of which was paid in cash and three thousand payable in eight years, with interest at six per cent. (6%), payable semi-annually, which sums were paid to and received by Charles Bobb.

Plaintiff states, further, that from the date of said deed of said Charles to said Hannah, to wit, April 18, 1843, the said Charles has received and collected all the rents, issues, and profits of said real estate and all the proceeds of sales of property sold, with the interest paid on the deferred payments down to the granting of the injunction and appointment of the receiver in this cause, and that he has kept the moneys collected and received as his own; that he never accounted for the same received in any way; that he never applied to nor took out letters of guardianship in the probate court for his infant children, as he should have done and as he was required to do; that he has never accounted for the sums received by him to the beneficiaries interested nor to his said children in any way.

That from said rents, issues, and profits by him received and from the proceeds of sales he has made large profits by lending the same at high rates of interest to various persons at ten per cent. and more and shaving notes at rates as high as 12 and 15% and even higher per annum, and has wholly failed to perform his duties as trustee by accounting to and paying over to the plaintiff and his other children the money due them.

Plaintiff believes and therefore charges that said defendant, Charles Bobb, from said trust funds has collected and received over $400,000.00, some part of which was invested in the improvement of some of said lots, but what amount was so expended this plaintiff cannot state, as no full accounts of the receipts and expenditures upon said property were kept by said Charles Bobb
184 and no accounts have ever been rendered by him, as was his duty to do.

Plaintiff states that of said trust property he is the owner of the equitable interest in three undivided tenths; that Charles L. Bobb owns three-tenths; that Lucy G. Taylor owns three-tenths, Cora S. Taylor one-twentieth, and George L. Bobb one-twentieth, and that said parties have a like interest in the rents, issues, and profits of said trust property and in the proceeds of the lands sold and in the proceeds and profits made from the use of said funds by said Charles Bobb in lending the same from time to time.

That said Charles L. Bobb, by deed dated November 30th, 1857, conveyed his interest in said lands remaining unsold to Charles Bobb, as trustee of Irene, wife of said Charles L., and by deed dated February 26th, 1861, said Charles conveyed said property to Charles L. Bobb.

That said Lucy G. Bobb intermarried with said William G. Taylor.

That said Cora S. Bobb intermarried with said James K. Taylor.

That said George L. Bobb was a minor when this suit was commenced or brought, but is now, as plaintiff believes, of age.

That said Charles L. and Irene, his wife; William F. Taylor and Lucy G., his wife; James K. Taylor and Cora S., his wife, and George L. Bobb refused to unite with plaintiff as coplaintiffs in this suit, and are therefore made parties defendant therein.

That he has requested the said Charles Bobb to convey to him his share of said lands and to come to an accounting for his share of the rents and profits of said lands and the proceeds of sales and of the profits made by lending the monies received, but the said Charles has refused so to do.

185 That said defendant, Charles Bobb, has during the last four (4) years received at least eight thousand dollars ($8,000.00) per year, as will appear by copies of his returns to the United States assessor, now on file in this cause.

That he neglected and failed to pay the State, county, and city taxes for 1869 on said trust property, though, as above stated, having large and ample funds of trust money in his hands to do so, and thereby allowed the legal penalties and costs to accumulate against said trust property, to the loss and injury of the beneficial owners thereof.

That said trustee, Charles Bobb, wholly neglected to make to the United States assessor, as required by law, returns of the annual income of said trust estate for the years 1865, 1866, 1867, and 1868 at the proper times during these years, and only did so on the 9th day of December, 1869, as will appear by copies of said returns hereinabove referred to, and then did so on compulsory and peremptory orders of the officers of the United States, as plaintiff is informed and believes, and even yet he has not paid said income taxes for said years, though he had ample trust funds in his hands to do so, and thereby he exposed said trust property to seizure and sale, not only for said taxes, but for severe penalties and costs in addition, all of which exposed the rights of plaintiff and the other beneficial owners of said trust estate to loss and injury.

That said defendant, Charles Bobb, trustee as aforesaid, has, since the commencement of this suit, proceeded to tear off the roofs of several of the buildings on said trust real estate under the pretence that they needed repairs, but really, as plaintiff believes and charges, with a view to expend as much as possible of the trust money in his possession, and thus deprive plaintiff and the other beneficial owners thereof of the same.

186 Plaintiff avers that the repairs that said trustee was proceeding to make about the time when the injunction and receiver were prayed for heretofore in this cause were wholly unnecessary, at least to the extent that he was making them, and that said expenditure was not only unnecessary at the time, but was a clear mismanagement of said estate and squandering of the funds, to the great prejudice and injury of the plaintiff herein and other beneficial owners thereof; and he further avers that the non-return of the incomes of said trust property at the time and during the

years required by law and the non-payment of the State, county, and city taxes for 1869 were all purposely done by said trustee, as plaintiff believes and charges, with a view to absorb, in penalties and expenses, as much as possible of said trust estate; but, even if not done with such intent, the neglect and failure to pay them and the incurring of penalties and costs and exposing said property to seizure and sales, when said trustee had funds in hand sufficient therefor, show such negligence, bad faith, and bad management on the part of said trustee as render him an unfit person to continue the charge of said trust estate.

That the rents and profits arising from the real estate held in trust by said Charles Bobb and secured by him for the last twenty-five years (25) years and more, and not accounted for in any manner whatever, together with the moneys collected by him on the notes held in trust and hereinabove described and the accumulation thereof, amount to a very large sum, the most of which is either in moneys or in personal securities held by said Charles Bobb; that said Charles Bobb has, in comparison with the amount of said trust money in his hands, but a small amount of real estate or visible personal property standing in his name, and, from
187 such being his condition, plaintiff is apprehensive that if said Charles Bobb is allowed to receive the income of said estate that it can never be recovered of him when a decree shall be obtained therefor.

That since or just before the commencement of this suit he, the said defendant, has made threats that the matter should be kept in litigation for many years, and that before a decree could be obtained he would convert all his property and securities into money, put it in his pocket, and thus deprive plaintiff and the other beneficial owners of said trust property of their rights therein.

That the bringing of this suit by plaintiff has caused such hostility, bitterness, and violence in the said Charles Bobb that no consultation can be had with him by the plaintiff or the other beneficiaries regarding the interests in said property, and plaintiff fears and believes that he, said Charles Bobb, will carry out his said threats, and he therefore believes that his rights and the rights of said beneficiaries to said trust funds are wholly unsafe in said Charles Bobb's hands.

In consideration of the pr-mises, plaintiff prays that the said Charles Bobb be required to account for his management of said trust property and for the rents, issues, and profits received by him for the proceeds of the lands sold, with proper rests, from the said April 18th, 1843, and that he may account for the profits made by him in using said trust funds, and that upon said accounting he may be adjudged to pay the plaintiff the amount found due him, and that he be adjudged to convey to the plaintiff and the other beneficiaries in said trust property the legal estate in said lands, in accordance with their respective interests, and he prays that the receiver previously appointed in this suit may be continued, and that said Charles Bobb be required to deliver to said receiver all
188 the securities and effects belonging to said trust property,

and that the injunction heretofore granted may be continued, and that he may have such other and further relief as to the court may seem meet.

And for a further cause of action plaintiff states that on December 26th, 1843, said defendant, Charles Bobb, by a conveyance of that date, a copy of which was filed with the original petition and marked Exhibit "B," the original not being in the possession, custody, or control of the plaintiff, but is, as plaintiff believes, in the custody of said defendant, Charles Bobb, conveyed in equal shares to his children, Charles L. Bobb, William H. Bobb, since deceased, and the plaintiff, three promissory notes, all dated December 24, 1842, executed by one John Kelly to the order of the said Charles Bobb, each for the sum of one hundred dollars, payable, with interest, in six, twelve, and eighteen months; which notes were secured by deed of trust of said John Kelly; also one other note, executed by Sands E. Sellick, dated March 20th, 1843, for the sum of seven hundred and twenty dollars, to the order of said Charles Bobb, payable ten years after date, with six per cent. interest, payable semi-annually, and secured by deed of trust.

That the nominal consideration expressed in said deed was the sum of one thousand dollars, but the said deed was made by way of gift, for natural love and affection, and the effect of said deed, the said Charles being the father and natural guardian of said infants, was a declaration that said Charles held said notes in trust for the benefit of his said children, and the said Charles, as such guardian,

189 collected the sums due upon said notes and held the same for the benefit of said grantees. Said William H. Bobb died in 1844, leaving as his heirs and distributees his father, the said Charles; his mother, Mary H. Bobb; his brother, Charles L. Bobb, this plaintiff, and his sister, Lucy G.

That by said deed plaintiff took five-fifteenths ($\frac{5}{15}$) of said notes, and by the death of said William he acquired one-fifteenth ($\frac{1}{15}$) in addition, making six-fifteenths ($\frac{6}{15}$).

That said Charles L. Bobb took and acquired the same interest, six-fifteenths ($\frac{6}{15}$).

That by the death of said William, Lucy G. Bobb, now Lucy G. Taylor, acquired one-fifteenth ($\frac{1}{15}$) and the said Charles and Mary H. Bobb acquired each one-fifteenth ($\frac{1}{15}$), and by the death of said Mary H. plaintiff and Charles L., Lucy G., Cora S., and George L. acquired equally her share, and by deed dated January 17, 1856, acknowledged and recorded, said Charles acknowledged that he collected said notes as trustee and guardian of his children; a copy of said last-mentioned deed is on file, marked "B B."

Plaintiff therefore prays that said Charles Bobb may account for the proceeds of said notes as guardian and trustee, with annual rests, from the time said monies were collected, at the rate of ten per cent., and that he be adjudged to pay the same to the beneficiaries entitled thereto in accordance with the respective interests, and that he may have such other and further relief as to the court may seem meet.

M. L. GRAY AND R. S. McDONALD,
Att'ys for Plaintiff.

STATE OF MISSOURI, } ss:
County of St. Louis, }

John H. Bobb, plaintiff, on oath says he believes the foregoing petition and the matters as therein stated are true.

JOHN H. BOBB.

190 Sworn and subscribed before me this 1st Nov., 1870.

JOHN LEWIS, *Clerk.*

And afterwards, to wit, on the 14th day of November, 1870, defendants Charles L. and Irene Bobb filed their answer in words and figures following, to wit:

The defendants Charles L. Bobb and Irene Bobb, his wife, for answer to the amended petition, come and say that, so far as they are advised and believe, the allegations of said amended petition are true, and the same may be taken as confessed by these defendants.

CHARLES L. BOBB,
IRENE BOBB,
By JOHN D. STEVENSON,
Their Attorney.

And afterwards, to wit, on the 30th day of November, 1870, defendant Charles Bobb field his separate answer in words and figures following, to wit:

The defendant Charles Bobb, for his answer to the second amended petition filed by plaintiff in this case, states that he was married to Mary Hamilton on the 16th of October, 1834, and that there were born of said marriage six children, to wit, John H. Bobb, the plaintiff, and Charles L. Bobb, William H. Bobb, Lucy G. Bobb, now the wife of William F. Taylor; Cora S. Bobb, now the wife of James K. Taylor, and George L. Bobb, who at the commencement of this suit was a minor; that said William H. Bobb died on the — day of ——, 1844, without ever having been married, and therefore leaving no children, and the said Mary H. Bobb, wife of this defendant, died on the 18th day of May, 1853, leaving the other five of said children as her only heirs-at-law.

191 This defendant further states that at the time he married the said Mary Hamilton she was entirely without property or effects of any kind or character whatsoever; that she never brought any property or effects whatsoever to the said marriage, and that this defendant never acquired or received any property or effects whatsoever by or through his said wife or his said marriage with her.

This defendant states that prior to his said marriage he had acquired and was in the possession of some of the property mentioned in the first count of said second amended petition, and that the rest of said property mentioned in said first count was acquired by him subsequent to his said marriage and before the death of his said wife; that all of the real estate described in said first count of said second amended petition was acquired by this defendant by his own indi-

vidual exertions, the labor of his own hands and the sweat of his own face.

That some time prior to the 18th of April, 1843, at which time this defendant was the absolute owner in fee of all the real estate described in said first count in said second amended petition, his said wife, Mary H., being then in feeble health and afflicted with disease, conceived and became possessed of the idea and belief that this defendant would lose all of his said property and would become a bankrupt, and that she, the said Mary H., and the said children then born and which might thereafter be born would become penniless and come to want; that said Mary H., under the belief aforesaid, became unremitting and persistent in her pursuasions and importunities for this defendant to make some disposition of his property or a part thereof which would secure support to said Mary H. and said children, born and to be born.

That this defendant, out of consideration and kindness to his said wife and to gratify her and to relieve her from said fears
192 of want and dependence or starvation, which were in fact without any foundation, did, on the 18th of April, 1843, by a deed of that date, convey all of said real estate described in said first count of said second amended petition to Hannah Letcher, who was then a single woman and who most of her time made her home in — family of this defendant, and who subsequently intermarried with John D. Stevenson, and who is now the wife of said Stevenson, for the nominal consideration of ten thousand dollars, which deed has been heretofore filed and marked Exhibit No. 1.

That said Hannah Letcher never paid nor did this defendant ever receive any consideration whatever from her or any one else for said land.

This defendant denies that the relation of trustee and *cestui que trust.* between plaintiff and this defendant or the rest of his children aforesaid ever existed prior to the date of the deed made by Hannah Letcher to him, dated 23d January, 1845, and denies that the conveyance made by this defendant to Hannah Letcher, dated 18th April, 1843, was made in trust or had any trust coupled with it whatever; and denies that it was understood between this defendant and said Hannah that the said Hannah should hold said real estate in trust for the separate use and benefit of said Mary H. Bobb and of her children then being, to wit, John H., Charles L., and William H. Bobb, or any one else.

This defendant denies that on the 18th day of April, 1843, the date of the said deed executed by him to Hannah Letcher, or at any other time, she, the said Hannah, or any one else handed or delivered to him, in payment of the consideration of said conveyance, the sum of ten thousand dollars expressed in said deed, a bag of silver coin, or other money of any amount whatever.

193 This defendant denies that John Bobb, Sr., ever furnished any amount of money whatever to said Hannah or any one else to pay the consideration mentioned in said deed or any part thereof.

That at the date of said deed, to wit, 18th April, 1843, the said

John Bobb, Sr., was not a resident of this city or county and had no knowledge of the transaction, and that on the day and year last aforesaid the said John Bobb, Sr., was in very poor circumstances and not able to pay his own debts and had no money to pay or advance to Hannah Letcher or any one else as consideration for said deed or any other purpose.

This defendant, further answering, avers, as he has heretofore stated, that he executed said deed to said Hannah for said real estate, dated 18th April, 1843, without receiving any money or any valuable consideration whatever therefor; that, as this defendant has heretofore stated, he was induced to make the said deed to the said Hannah for the sole purpose of gratifying the desires and allaying the unfounded fears and apprehensions of want and starvation entertained by his wife, Mary H. Bobb; that the said conveyance was made by this defendant to the said Hannah with the full knowledge and understanding that said real estate contained in said deed should be and remain, in fact, the absolute property of this defendant without any trust whatever coupled therewith or in any manner affecting the same, and to be treated, used, and managed by this defendant in all respects and to all intents and purposes as his own absolute property.

That in accordance with said agreement and understanding this defendant executed the said deed to said Hannah dated 18th April, 1843, and this defendant, as he had a perfect right to do under said agreement and understanding, did sell and dispose of certain
194 portions of said real estate to divers persons for his own use and benefit, and the said Hannah executed and delivered deeds conveying said real estate agreeably to his directions, to wit:

One lot to John J. Anderson, one lot to Henry Deppe, and one lot to John B. Rhode; that the sales to said Anderson, Deppe, and Rhode were made after the date of the deed executed by this defendant to said Hannah, to wit, 18th April, 1843, and before the execution of the deed of trust by said Hannah to this defendant, dated 23rd January, 1845; that this defendant received the proceeds of said three sales in money and notes as his own absolute property, and not as guardian of his children or any of them, and not in trust or as trustee for any one; that said Hannah never received or had in her possession or under her control any proceeds, in either money or notes, of said three sales or any of them, and never was entitled to such proceeds or any part thereof, and never had any right or authority over the same whatsoever, and never had any right or authority to convey the same or to declare any trust in relation thereto.

This defendant states that the title to all the real estate contained in the deed executed by him to said Hannah, dated April 18th, 1843, except the three lots sold to Anderson, Deppe, and Rhode aforesaid, nominally remained in her for the use and benefit of this defendant and no one else, until the 23d of January, 1845, at which time, in consequence of the fact that said Hannah was about to intermarry with John D. Stevenson, it was thought best to have the title to the rest and residue of the real estate contained in said deed

dated 18th April, 1843, moved out of her, and to effect this purpose the said deed of trust dated 23 Jan'y, 1845, was executed by said Hannah to this defendant.

This defendant avers that no consideration whatever was received by him for the property contained in said deed dated 18th
195 April, 1843, and that said Hannah Letcher never received any consideration whatever for the property conveyed by her to this defendant by said deed of trust dated 23d January, 1845.

This defendant denies that he ever became the trustee of any one in respect to any of said property until the execution of the deed by Hannah Letcher to him dated 23d January, 1845, and by the deed last aforesaid. This defendant only became the trustee of the beneficiaries therein named as to the property therein described and none other.

This defendant states that after the date of the deed of trust of Hannah Letcher to this defendant dated 23 January, 1845, he received the rents and profits arising from said real estate up to the time of the execution of this suit, except for the period of time between September 1, 1858, and May 26, 1862, during which time said rents and profits were received by the plaintiff, and this defendant paid the taxes, assessments, and charges on said real estate, and paid out large sums of money for building, repairs, grading, and paving on said property.

This defendant admits that said Mary H. Bobb died May 18th, 1853, leaving as her heirs and distributees said John H., Charles L., and George Bobb and Lucy G. and Cora S. Taylor, and admits, as said deed of trust of 23 January, 1845, now stands, the rights or shares of the parties thereunder are correctly stated, subject, however, to the estate of tenancy by the curtesy vested in this defendant in the one-fourth part of said trust property of which the said Mary H. Bobb, the wife of this defendant, died seized and possessed.

This defendant admits that a suit was instituted in the St. Louis land court on or about March 6, 1854, for the purpose of reforming said deed of trust dated January 23, 1845, so as to enable
196 this defendant as trustee under said deed to sell and convey said real estate without the consent and direction in writing of said beneficiaries, upon the ground that the said children were minors and therefore incompetent to give any such consent or direction.

That by the judgment and decree of said land court the said deed of trust was reformed for the purpose and to the extent aforesaid; that no other question than the one alone stated was presented to or passed upon by said land court.

This defendant admits that he collected rents from a part of said lot seventhly described in said deed of this defendant to said Hannah at the rate of $28.12½ per annum, payable semi-annually, from April 15, 1843, to March 17, 1848, when under a decree of the circuit court the title to the same was vested in E. C. Bosworth upon payment of $405, which was paid to this defendant; but this defendant denies that plaintiff or any of the beneficiaries under said deed of trust ever had any right, interest, or claim whatever to any rents

or profits arising from said lot which accrued prior to the date of said deed of trust, to wit, 23 Jan'y, 1845.

This defendant admits he sold the other part of said lot seventhly described in said deed of this defendant to Samuel H. Spielman, but denies it was sold for the sum of $1,000.00.

This defendant avers that the sale to Spielman was made about the same time as the sale of the other part of said lot to Bosworth, and upon the same terms and for the same amount and no more, to wit, $405. This defendant states that he leased said portions of said lot seventhly described to said Bosworth and Spielman severally at the rate of $28.12½ per annum, which leases were made before the date of said deed of trust, Jan'y 23d, 1845, and
197 under said leases the said Bosworth and Spielman were each entitled to their respective portions of said lot 7th at the price of $405 *dollars* each; that said Bosworth and Spielman paid said ground rent up to a point of time which this defendant does not now recollect, and then paid up the said purchase-money, amounting to 405 dollars each, and thereby acquired the fee-simple title to their respective shares of said lot No. 7, and all that the beneficiaries under said deed of trust are entitled to on account of said lot No. 7 is the rent upon the same from the date of said deed of trust to the said purchase and the amount of said purchase-money.

This defendant admits the sale, about Oct. 14, 1853, of the lot fifthly described in said deed of 18th April, 1843, to D. H. Waestendendeck for the price and upon the terms as alleged in said second*ed* amended petition.

This defendant admits that from the date of said deed made by him to said Hannah, to wit, 18th April, 1843, he received and collected all the rents, issues, and profits of said real estate except during the period aforesaid, when they were collected and received by the plaintiff, and he admits that he received the proceeds of sales of such portions as were sold by him, and for the prices mentioned in this answer, and no other.

Defendant denies that he has kept said rents, issues, and profits or the proceeds of such sales as his own money, but he avers that he paid, laid out, and expended the same in improving and making repairs upon and in paying taxes and expenses upon said trust property and in making advances to said beneficiaries under said deed of trust, as hereinafter stated.

Defendant admits he never applied for letters of guardianship in the probate court for his infant children and denies that
198 he should have done so or that he was required to do so by law.

Defendant admits that he never made out any regular account with the beneficiaries under said deed of trust, and that he never had any regular settlement with them, because the said *cestui que trusts* had not all at the commencement of this suit attained their majority, and because they all often expressed themselves to the effect that they were satisfied the trust had been faithfully performed by this defendant, and that the rents, issues, and profits arising from

said trust property did not amount to more than the expenditures for improvements, repairs, and taxes and the sums so advanced by said defendant to said *cestui que trusts* as aforesa-d.

Defendant denies that from said rents, issues, and profits by him received or from the proceeds of said sales he has made large profits or any profits at all by lending the same to any person whomsoever at any rate of interest whatever, and denies that he has failed to perform his duties as trustee under said deed of trust, but, on the contrary, this defendant avers that he made himself a slave by his labor and efforts to manage, improve, and repair said trust property so as to make it in the highest degree profitable to the parties interested therein.

Defendant denies that from said trust property he has collected and received over $400,000.00 or anything like that sum.

Defendant admits, as he has heretofore admitted, that under said deed of trust executed by Hannah Letcher to him, dated 23d Jan., 1845, as the same now stands, the plaintiff, Charles L. Bobb, and Lucy G. Taylor are each entitled to three-tenths of the equitable estate in said property, and that Cora S. Taylor and George Bobb are each entitled to one-twentieth thereof, subject, however, to the estate of tenant by the curtesy in this defendant in that por-
199 tion of said equitable estate of which the said Mary H. Bobb, his wife, died seized and possessed.

Defendant admits that a few days before the suit was instituted he received a paper signed by plaintiff, requesting him to convey to plaintiff what he claimed to be his interest in this trust estate, and this defendant declined to do so, because under the said deed of trust he had no such power.

This defendant denies that plaintiff in his second amended petition states correctly what the returns made by this defendant to the United States assessor show. The said returns alluded to by plaintiff are for the years 1866, 1867, 1868, and 1869. The return for 1866 shows the gross receipts for said property for that year to be $8,485.62; amount of taxes, $1,228.58; repairs, $1,200.00; leaving a net balance of $4,400.04. The return of 1867 shows receipts for that year to be $8,478.28; taxes, $1,269.84; repairs, $1,200; net balance, $5,008.44.

The returns of 1868 show receipts for that year to be $7,843.20; taxes, $1,449.63; repairs, $1,165.00; net balance, $3,614.63, and the returns for 1869 show the receipts for that year to be $8,577.54; taxes, $1,408.26; repairs, $1,356.90; net balance, $4,812.38.

Defendant admits he did not pay the taxes, State and county and city, for 1869 on said trust property, but denies that he had ample means or sufficient means in his hands to do so.

Defendant admits he did not pay the income tax on said property for the years 1866, 1867, 1868, and 1869, and admits he made no returns to the United States assessor for those years at the time they should have been made; but denies that it was on the grounds of negligence on his part or any intention to do wrong in any manner. This defendant avers the said returns were not
200 made by him, and the income taxes on said trust property

were not paid for said years as they transpired because of the strenuous and urgent objection of the plaintiff in this suit, he, the plaintiff, pretending to be well acquainted with the laws, rules, and regulations of the United States upon this subject, and holding that after paying the taxes and repairs out of the aggregate receipts and dividing the remainder among the beneficiaries of said estate, and then, after taking off of each share the sum of $1,000 *dollars* exempted, there would be no sum left upon which to pay income tax, he, the said plaintiff, promising and agreeing to see the United States assessor on the subject, and to explain the truth of the matter to him and to make it all right with him, and this defendant, believing the representations aforesaid of plaintiff, was deceived by them. This defendant, being ignorant of the laws and regulations of the United States, confided in the statements and promises of plaintiff, and for that reason the said returns were not made, and if there be any wrong committed in not making said returns, the plaintiff is to be blamed for such wrong and not this defendant.

Defendant denies that he had ample or any sufficient amount of said trust funds in his hands to pay said income taxes for said years, but avers that he would have advanced said income taxes for said years and paid the same out of his own money but for the strenuous objections of plaintiff, as above stated.

This defendant denies that he at any time whatever made or endeavored to make any unnecessary repairs on said trust property. He admits that since the commencement of this suit he took steps to have the old shingle roofs on three of the houses belonging to said trust property removed and new shingles put on the same, and avers that said old roofs were decayed and in a leaky condi-
201 tion, and it was absolutely necessary to have new shingles put on said roofs in order to preserve said houses and make them tenantable.

This defendant denies that he at any time ever squandered or attempted to squander any of said trust funds or attempted to absorb any of said funds in useless expenditures, and denies that he ever in anywise mismanaged said trust estate, but, on the contrary, avers that he managed said trust fa-thfully and properly and solely with a view to promote the best interests of those entitled thereto.

This defendant denies that the non-return of the said income of said trust property for said years or the non-payment of the State, county, or city taxes for 1869 was purposely done by this defendant with a view to absorb in penalties or expenses as much as possible of said trust estate or any portion thereof.

And denies that the failure to pay said income, State, county, and city taxes or any of them was caused by the negligence of this defendant, and denies that he had in his hands ample or sufficient funds belonging to said trust estate to pay the same, and denies that said trust estate ever became liable for any forfeitures, penalties, or to any seizure by reason of any fault, mismanagement, or negligence of this defendant.

This defendant admits that since the date of the deed of trust executed to him by Hannah Letcher, dated Jan'y 23, 1845, and up

to the time the receiver in this case was appointed he received the rents and profits arising from said trust property and managed the same, except the period of time as above stated, during which said rents and profits were received and said property managed by plaintiff. This defendant denies that he ever held any interest in any notes for the benefit of plaintiff or any of the rest of his children, and denies that he has in his possession any accumulations in notes or money on account of said trust property, and denies that this defendant has, in comparison with the amount of said trust money in his hands, but a small amount of real estate or visible personal property standing in his name, and denies that from the — condition of this defendant at any time that the plaintiff was apprehensive or ever at any time had any reason whatever to be apprehensive that if this defendant were allowed to receive the income of said estate that it could never be recovered from him in case a decree should be obtained therefor.

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This defendant avers that he has been at all times since the execution of said deed of trust to him and now is willing and amply able to pay and satisfy all just claims and demands which the plaintiff or any other of the beneficiaries under said deed of trust may have against him, if any they have, which the plaintiff very well knew; and not only this, but this defendant avers that from a period long prior to the date of any of these transactions up to this present time he has at all times been willing and more than able to pay and satisfy any and all just claims against him held by any one in the world, and this has been very well known to the plaintiff as far back as he can recollect.

This defendant denies that he at any time ever did make threats that this matter should be kept in litigation for many years, or that the adjustment and settlement of said matters should in anywise — hindered or delayed, and denies that he ever did threaten that before a decree could be obtained he would convert all of his property and securities into money and put it in his pocket, and thus deprive plaintiff and the other beneficial owners of said trust property of their rights therein. This defendant denies that he ever made any threats to do anything to deprive plaintiff or any one else of any demand or claim against him.

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This defendant denies that the bringing of this suit was the cause of any violence, hostility, or bitterness between him and plaintiff or said other beneficiaries, but avers that violence, hostility, and bitterness on the part of plaintiff alone against this defendant was the cause of his bringing this suit, and that defendant knows of no good reason why plaintiff or said other beneficiaries could not consult upon and settle any matters whatever with him if they chose so to do.

This defendant avers that he executed the deed dated 18th April, 1843, to Hannah Letcher conveying the property therein described to her for the use and benefit of this defendant and for no other purpose, and the title to the same remained in said Hannah Letcher for the same use until the deed of trust dated Jan'y 23, 1845, was executed by her, which deed of trust was executed by her, among

others, for the reason that she was then about to intermarry with John D. Stevenson, which she did shortly after the date of said deed of trust; that this defendant never received any consideration whatever for the deed executed by him to said Hannah dated 18th April, 1843, nor did said Hannah ever receive any consideration whatever for the said deed of trust executed by her to this defendant dated January 23, 1845, nor was it ever understood or intended that said Hannah or this defendant ever should receive any consideration for the execution of said deeds or for the property conveyed by them; that the sums or amounts mentioned as consideration in said deeds were purely nominal.

This defendant avers that the only moving cause of this arrangement whereby he conveyed certain real estate to said Hannah by the deed dated 18th April, 1843, and whereby she conveyed
204 certain portions thereof back to this defendant by her deed of trust dated 23 January, 1845, was the desire on the part of this defendant, as before stated, to gratify the whims and caprices and to remove the unfounded fears of want and starvation on the part of his said wife, Mary H., caused by her low and feeble condition of health at that time; and this defendant avers that the said Hannah, being about to get married, executed the deed of trust aforesaid with the intent and for the purpose of conveying the real estate therein described to this defendant in trust for the use and benefit of *of* the said Mary H. Bobb and her children, then born and thereafter to be born, in order to provide and secure a sufficiency for the support and maintenance of the said Mary H. and for the support, maintenance, and education of her said children, then born and thereafter to be born; and this defendant avers that the said John H., Charles L., and George Bobb and said Lucy G. and Cora S. Taylor are all the children and issue of the marriage of this defendant with the said Mary H., and it was the intent and purpose in making said deed of trust dated January 23, 1845, to provide for the support, maintenance, and education of all of said issue and children equally and alike, and that the said Mary H., the said Hannah, and this defendant understood and believed that the said deed of trust was so drawn and worded as to carry out this intent and purpose and to effect this object.

This defendant avers that issue having been born alive by his said marriage with the said Mary H. and she having died on the 18th day of May, 1853, he is entitled to and became invested with the interest and estate of tenancy by the curtesy in the share and portion of the equitable estate in said trust property described in said deed of trust of which she died seized and possessed,
205 and which he claims and insists upon in this suit, and also his interest in the rents, issues, and profits arising therefrom, the same being an equal, undivided fourth part thereof, agreeably to the legal effect of said deed of trust as it now stands.

This defendant states that on the 14th day of February, 1865, at the instance of the said Charles L. Bobb, he, this defendant, in conjunction with said Charles L. Bobb and Irene, his wife, as parties of the first part, executed a certain deed of trust of that date covering five

of the pieces of property described in said first count, whereby said five pieces of property were conveyed to Wm. C. Jamison in trust to secure the payment of a certain promissory note of even date with said deed of trust, payable to said John H. Bobb, for twenty-five thousand dollars, payable six months after date, with interest at the rate of ten per cent. per annum; which said deed of trust remains unsatisfied of record, a copy of which has been filed in this suit, marked Exhibit No. 2.

For his protection this defendant asks that said Wm. C. Jamison and the holder of said note, whomsoever he may be, and he is unknown to this defendant, may be parties to this suit, so that the claim of such holder of said note may be duly passed upon and adjudicated herein, and to this end this defendant prays that said John H. and Charles L. Bobb be required to disclose the name of the person now holding said note.

This defendant states that at the date of the deed of trust executed by Hannah Letcher, to wit, 23 January, 1845, there were situate on the lot of ground secondly described in this petition five dwelling-houses, three of which were built in 1836 and two in 1834 by this defendant out of his own money.

206 That on the lot of ground thirdly described in said petition there are now situate seven dwelling-houses built by this defendant after the execution of the deed of trust of 23d January, 1845, to wit, two built in 1845 and one in 1847, two in 1850 and two in 1858, out of his own money advanced for the use of said trust estate.

That on said lot of ground fourthly described in said petition there are situate two dwelling-houses, both built by this defendant, one in 1836 and one in 1845, out of his own money.

This defendant states that in and by said deed of trust executed by said Hannah Letcher to this defendant, dated 23 January, 1845, it was and is provided, among other things, that this defendant, as trustee therein, should have power to rent, lease, mortgage, sell, or dispose of said property in said deed of trust described or any part thereof for such consideration, to such person or persons, and in such manner as they, the said Mary H., Charles L., John H., and Lucy G. Bobb, their heirs or assigns, should in writing direct, and the said Charles L., John H., and Lucy G. Bobb, being then minors, were incompetent to direct the sale of any portion of said real estate, in writing or otherwise, and this defect in said deed of trust was caused by a mistake, because it was intended by said Hannah in making said deed of trust to give this defendant, as trustee therein, full power and authority to sell and convey any portion of said trust property whenever and for whatever in his judgment was for the best interest of said trust; and by the judgment and decree of the St. Louis land court, duly rendered March 31, 1854, a copy of which is on file herein, marked Exhibit No. 4, to which this defendant and the said Charles L., John H., and Lucy G. Bobb and said Hannah Letcher, then Hannah Stevenson, and John D. Stevenson, her husband, were duly made parties, the said deed of trust dated

207 Jan'y 23, 1845, was duly reformed so as to give this defendant, as trustee as aforesaid, full power and authority to rent,

lease, mortgage, sell, or dispose of the said real estate or any part thereof without any written direction from said beneficiaries, in such manner and to such persons as in his judgment was for the best interest for said trust, which was the original object and intent of said parties to said deed of trust.

And this defendant states, as to the lot of ground fifthly described in said petition, that before the decree reforming said deed of trust was rendered as aforesaid, to wit, on the 13th October, 1853, by a deed of that date, he sold and conveyed to one Dietrick H. Waestendick the said lot fifthly described with the consent in writing of said Charles L., John H., and Lucy G. Bobb, which deed is filed herein and marked Exhibit No. 5, and after the rendition of said decree reforming the said deed of trust for the purpose of perfecting the title of said Waestendick to said lot, to wit, on the 23d of October, 1855, this defendant executed another deed of that date conveying said lot to said Waestendick, which is filed herein, marked Exhibit No. 6; that said lot was sold to said Waestendick for four thousand dollars upon the terms of one thousand dollars in cash down and the balance of three thousand dollars payable in eight years, with interest at six per cent. per annum, payable simi-annually, which balance and interest were paid.

That at the date of said deed of trust of Jan'y 23, 1845, on the lot sixthly described in the petition there was situate one dwelling-house built by this defendant in 1844 out of his own money.

As to the lot of 45½ feet by 67 feet deep, seventhly described in the petition, the defendant states that before he conveyed the
208 real estate described in said second*ed* amended petition to said Hannah, to wit, April 18th, 1843, this defendant had divided this piece of ground into two parts and executed a lease to one-half of it to E. C. Bosworth, dated March 23, 1843, for a term of fifteen years, at an annual rent of 28 dollars and 12½ cents, payable semi-annually, which lease contained a covenant binding this defendant to sell and convey in fee said lot to said Bosworth for the price of 405 dollars at any time within eight years from the commencement of said lease at the option of said Bosworth, and that another similar lease in all respects, dated on or about the same day, for a term of fifteen years, for the same amount of rent, payable semi-annually, with a like covenant to sell and convey in fee for a like sum of $405 *dollars*, was executed by this defendant for the other half of said lot to one Samuel H. Spielman.

That said Bosworth elected to pay and did pay, on or about the 17th day of March, 1848, to this defendant the said sum of 405 dollars for said half of said lot, and by the judgment and decree of the St. Louis circuit —, rendered on the 17th day of March, 1848, a copy of which is filed in this cause, marked Exhibit No. 7, to which the said Bosworth and the said Mary H., Charles L., John H., and Lucy G. Bobb and this defendant were all parties, the title and interest and estate vested in said beneficiaries under said deed of trust and in this defendant was divested out of them and invested in said Bosworth in fee-simple.

And the said Spielman, within the said period of eight years from

the commencement of his said lease, did elect to pay and did pay to this defendant a like sum of 405 dollars on or about the 31st day of July, 1847, as the purchase-money of his said half of said lot so leased to him as aforesaid, and this defendant, on or about the date last aforesaid, did execute and deliver to said Spielman a
209 deed conveying to him absolutely in fee the said half of said lot. This defendant believes and avers that neither the said lease or deed of conveyance executed by him to said Spielman was ever recorded, but that the originals thereof were lost or destroyed; that said Spielman remained in the possession of his half of said lot from the date of his lease on up to the time of his death, which *accrued* about the year —.

And after his death the half of said lot of which he died seized was sold in partition among his heirs, and one Christian Garrall became the purchaser thereof at said sale. After the purchase of said half of said lot by said Garrall it was ascertained that neither the said lease nor said deed executed by this defendant to said Spielman had been recorded, and the originals could not be found, and that therefore the said Garrall, who held under said Spielman, had no legal title of record to said half of said lot, although he had bought and paid for the same and was the owner thereof; and this defendant, well knowing that he had duly conveyed said half of said lot to said Spielman in his lifetime and received the purchase money for the same, and that the said Garrall had acquired the interest thereto of which said Spielman died seized, this defendant, as was his duty in the premises, made another deed conveying said half of said lot directly from him to said Garrall; said purchases were made by said Spielman and Bosworth about *as about* the time stated above, since which this defendant has had nothing whatever to do with said lot of ground seventhly described in said second amended petition.

This defendant states that he never received any consideration whatever from Christian Garrall for the said conveyance made by this defendant to him, but the same was made for the original
210 consideration, which had before then been paid to this defendant by the said Spielman.

As to the lot of ground ninthly described in said second amended petition, this defendant states the facts to be as follows: This lot of ground is forty-four feet in front on Walnut street by 136 feet in depth; that about the year 1840 or 1841, before the execution of his said deed conveying said property to Hannah Letcher, this defendant divided said lot into two parts, one fronting twenty feet and the other fronting twenty-four feet on Walnut street, and said part containing 20 feet on Walnut street he leased to one John Shannon for a term of ten years, at the rate of two dollars per front foot per annum; that the part containing twenty-four feet front on Walnut street was leased by this defendant to one —— Fife for ten years, at two dollars per front foot; that said Fife occupied said premises for a time—this defendant cannot recollect how long—and then abandoned the same, and never paid any rent at all therefor. Said Fife was insolvent, and nothing could be or was made out of him;

that said Shannon succeeded to the rights of said Fife, and afterwards the said Shannon assigned his interest in said 24 feet to one Mathew Washburn. Under both of said leases this defendant covenanted to pay for the improvements on each of said lots at the expiration of said leases, or to sell said lots to said lessees at a valuation to be ascertained agreeably to the mode set forth in said leases; that this defendant did pay said Shannon, at the end of his lease, the sum of about 2,000 dollars for the improvements put upon the said 20 feet of said lot, and also paid said Washburn about 475 dollars for the improvements put upon his 24 feet of said lot; this defendant paid said Shannon in April, 1854, and paid said Washburn in 1857; that in 1855 the improvements on said
211 Washburn's portion *was* removed and a new dwelling built thereupon by this defendant, and in 1859 three other buildings—dwelling-houses—were built by this defendant on the rear end of said 44 feet, fronting on said alley.

This defendant states that since he has had charge of said trust property he has paid, laid out, and expended in taxes, special and general, and in building houses and making improvements and repairs on said trust property about 77,433.30 dollars, and that during said time this defendant did and performed work and labor himself and with his own slaves and hands on said trust property in improving the same amounting to the sum of 3,400 dollars; and this defendant is entitled for his services as trustee during said time to the sum of $25,000 *dollars*, making in the aggregate the sum of $105,833.30 *dollars*.

And that since he has had charge of said trust property he has collected rents amounting in the aggregate to about 80,883.73 dollars, exclusive of the rent which accrued on said property from September 1st, 1858, to May 28, 1862, during which period of time last aforesaid all of the said rents and profits arising from said trust property were collected by plaintiff, which this defendant believes and charges to be about 12,000 dollars; that plaintiff has paid over a small portion of the sum last aforesaid at various times and in various sums to this defendant. How much he cannot now state, because he doesn't recollect and has no means of obtaining the information within his reach, but he avers that whenever plaintiff paid him, defendant, any money on account of rent so collected by him, as aforesaid, this defendant gave plaintiff a receipt therefor, which receipts are now in plaintiff's possession and will show the amount of said rents collected and paid over by
212 plaintiff to this defendant, which this defendant believes and charges does not exceed the sum of 5,000 dollars, and that the balance of said rents for said period collected by plaintiff, to wit, about 7,000 dollars, has never been accounted for by him.

This defendant further states that about the 1st of September, 1858, he left the city and county of St. Louis to reside in the county of Washington, Missouri, and on or about that day this defendant turned over said trust property to the plaintiff in order that he might, in the absence of this defendant, collect the rents accruing thereon and to pay the taxes and make necessary improvements to

keep the same in repair; and about the same time, to wit, September 1st, 1858, this defendant, to enable the plaintiff properly to take care of and manage said trust property, also delivered to him two books containing the accounts of this defendant showing in detail all moneys paid, laid out, and expended by this defendant in building upon, improving, and repairing said trust property and all taxes paid thereon and the rents received for the same since this defendant took charge thereof as trustee, and the tenants then occupying said property and the amount of rent paid and agreed to be paid by each one of them; that this defendant has frequently requested and demanded the plaintiff to return to him said two books of accounts, but the plaintiff has always refused and neglected and still refuses and neglects so to do.

And this defendant is informed and believes and charges the fact to be that the said plaintiff has totally destroyed said two books of accounts.

And this defendant avers that by reason of his inability to get said two books of accounts he is unable to furnish a detailed statement showing the items of receipts and expenditures upon
213 said trust property mentioned in said second amended petition, but believes and avers that the amounts hereinbefore mentioned are substantially correct.

And this defendant further states that he received as the proceeds of the sales of said pieces of trust property sold by him to said Bosworth, Spielman, and Westendaeck, as above stated, the sum of 4,810 dollars.

This defendant states that he has paid and advanced to said John H. Bobb, as one of the beneficiaries under said deed of trust, 27,500.00 dollars, and has paid out and expended out of said funds for the support, maintenance, and education of said John H. Bobb 4,450 dollars, making in the aggregate 31,950 dollars.

And this defendant has paid and advanced to said Charles L. Bobb, as one of the beneficiaries under said deed of trust, 25,000 dollars, and has paid, laid out, and expended out of said trust funds for his support and maintenance and education 3,150, making in the aggregate 28,150.

And this defendant has paid out and advanced to the said Lucy G. Bobb, as one of the beneficiaries under said deed of trust, 11,415 dollars, and paid, laid out, and expended out of said trust funds for her support, maintenance, and education 3,345 dollars, making in the aggregate 14,760 dollars.

That the defendant has paid out — advanced to said Cora S. Bobb, now Taylor, as one of the beneficiaries under said deed of trust, 9,0067.65, and has paid, laid out, and expended out of said trust funds for her support, maintenance, and education 2,872.50 dollars, making in the aggregate 11,940.15.

And this defendant has paid, laid out, and advanced to said
214 George L. Bobb, as one of the beneficiaries under said deed of trust, 3,028.15 dollars, and has paid, laid out, and expended out of said trust funds for his support, maintenance, and education 4,620 dollars.

This defendant also endorsed a promissory note executed by said George L. Bobb and one McGinnis for 3,000 dollars, due May 15, 1870, with interest thereon for 18 months at six per cent. per annum, which note at its maturity, principal and interest, amounted to 3,278.80 dollars, and which sum last aforesaid this defendant paid, and took up said note at its maturity, amounting in the aggregate to 10,926.95 dollars.

This defendant states that for some of the advances aforesaid he holds the promissory notes of the parties to whom said advances were made, which he is ready and willing to bring into this court, to be disposed of as the court shall direct.

This defendant denies that he loaned out any of said rents or profits or trust funds at al- at any rate of interest whatever, and denies any accumulation of rents, profits, or trust funds from said trust property amounting to 400,000 dollars or any other sum. He avers the fact to be that from the time he took possession of said trust property, in 1845, up to 1862 he was largely in advance; that up to the date last aforesaid he had paid out a large sum of money more than he received for or on account of said property; and this defendant avers the fact now to be that after charging him with all the rents and profits arising from said trust property and the amount of the sales of the portions sold as aforesaid and crediting him with the costs of improvements, buildings, repairing, insurance, taxes, and the value of his own services for labor done on said property and for his services as trustee, and for the said amounts ad-
215 vanced and paid over to said beneficiaries under said deed of trust, and the amounts paid, laid out, and expended in their support, maintenance, and education, it will be found that this defendant is largely in advance of said trust property and largely in advance of the plaintiff and the rest of said beneficiaries under said deed of trust; and this defendant believes and avers this to be the truth, and he denies that he is in any settlement with plaintiff or the other beneficiaries liable for any interest, to be calculated with rests or in any other way.

And this defendant, for his answer to the second count or
216 cause of action in said second amended petition, states: On the 24th day of December, 1842, he sold a piece of ground to John Kelly and executed a deed to him for the same, a copy of which has been filed in this case, marked Exhibit 8, for which said Kelly paid cash down in part and gave this defendant three promissory notes, mentioned in said second count, for the defer-ed payments, and which were paid to this defendant at maturity. This defendant further states that on the 20th day of May, 1843, he sold a lot of ground to Sands E. Sellick and Eliza, his wife, for 720 dollars; that no cash was paid down, but that said Sellick and wife executed their promissory note for said sum of 720 dollars, payable ten years after date, with interest at six per cent., payable semi-annually, and secured the same by a deed of trust upon said property, copies of which deed and deed of trust have been filed in this cause, marked Exhibits Nos. 9 and 10. Before the sales of said lots to said Kelly and Sillick and wife the same belonged to this defend-

ant, he long before the dates of said sales having acquired them from Isaac A. Letcher by purchase, and for which this defendant paid his own money, and no one but this defendant was entitled to the proceeds of said sale. This defendant denies that said notes executed by said Kelly or the note executed by said Sellick and wife were ever received, possessed, or held in trust by this defendant or any one else for the use or benefit or as the guardian or any sort of a guardian of said John H., Charles L., William H., or George L. Bobb or said Lucy G. or Cora S. Taylor or any one else. This defendant admits that, in order to satisfy the whims, caprices, and importunities of his said wife, Mary H., and to gratify her, he did execute a paper, purporting to convey said notes to his children,
Charles L., John H., and William H. Bobb, on the 26th day
217 of December, 1843, for an alleged consideration of 1,000 dollars; that no consideration whatever was ever given to or received by this defendant for said notes or either of them; that when said notes were executed by said Kelly and said Sillick and wife they were delivered by the makers thereof to this defendant, who was the payee in all of them, and that this defendant retained the entire possession and control of all of said notes from the time they were delivered to him until they became due and payable; that this defendant never delivered said notes or either of them to any one and never parted with his title in and to said notes or either of them for any purpose; that none of said notes ever passed out of the possession of this defendant until the same were paid by the makers thereof. This defendant denies that he received the money paid in satisfaction of said notes at their maturity in trust for the use or benefit or as guardian of plaintiff or any of the other parties to this suit. He avers that he received said money as his own, paid in satisfaction of debts due to him individually, and in no other way or manner, and that neither has the plaintiff nor any of the other parties to this suit any right or interest in said notes or any of them or the proceeds thereof, nor has he or they any right to call this defendant to account touching or concerning the same, as prayed for in said second count.

And this defendant, further answering, by way of a cross-bill, states that on the 18th day of April, 1843, at the earnest and persistent solicitations and importunities of his said wife, Mary H. Bobb, who was then possessed of a morbid and ill-founded fear that she and her children then born and which might thereafter be born
would come to poverty and want, he conveyed, by a deed
218 refer-ed to as Exhibit No. 1 in this answer, the real estate described in said first count of said seconded amended petition to Hannah Letcher for a nominal consideration of ten thousand dollars; that said Hannah Letcher paid nothing for said real estate and this defendant received nothing whatever therefor; that afterwards, on the 23rd day of January, 1845, for a nominal consideration of six thousand dollars, said Hannah Letcher conveyed said real estate mentioned in said deed of trust of that date back to this defendant in trust for the use of his said wife, Mary H., Charles L., John H., and Lucy G. Bobb; that said Hannah Letcher received

no consideration for the conveyance of said real estate mentioned in said deed of trust, and that neither the said beneficiaries under said deed of trust nor this defendant ever paid said Hannah Letcher any consideration whatever for making said conveyance, and it was perfectly understood that said Hannah Letcher was to pay nothing for said real estate and was to receive no consideration whatever for conveying the same back to this defendant in trust aforesaid.

This defendant avers that all of said real estate was his own property prior to the execution of said deed of trust, made by his own labor; that he acquired no property whatever by his wife, Mary H., or his marriage with her, which took place on the 16th day of October, 1834. The real consideration for the conveyance made by this defendant to Hannah Letcher, dated April 18, 1843, and her conveyance of the same back to this defendant in trust, dated January 23rd, 1845, was to gratify the morbid desires and remove the unfounded fears of want and starvation entertained by the said Mary H., and for the further purpose of making a provision for the support and maintenance for the said Mary H. during her
219 natural life and for the support, maintenance, and education of the children of Mary H. then, on the said 23d of January, 1845, born of her body and thereafter of her body to be born and by this defendant begotten, and for no other consideration whatever; that said deed of trust executed by said Hannah Letcher dated 23d January, 1845, was drawn by a justice of the peace named Frederick Kretschmar, who was ignorant and unlearned in the law, and that said Hannah Letcher and Mary H. and this defendant were also ignorant and unlearned in the law, and that a mistake was made by the said Kretschmar in drawing said deed of trust, in this, that said deed of trust was drawn by said Kretschmar so as to convey said real estate by said Hannah Letcher to this defendant in trust and for the use of said Mary H., Charles L., John H., and Lucy G. Bobb by name and no one else, the three last-named persons being children born of the body of said Mary H. born at the date of said deed of trust, making no provision for and excluding any children which might be born of the body of the said Mary H. subsequent to the execution of said deed of trust, which was not the intention, understanding, or meaning of the parties executing the same; that said Cora S. Bobb, now Taylor, and George L. Bobb *was* born of the body of the said Mary H., by this defendant begotten, subsequently to the execution of the said deed of trust, and by reason of the mistake aforesaid are excluded from all benefits under the same; that by reason of the mistake aforesaid no provision was made in said deed of trust for said Cora S. and George L., as was intended to be done and as was supposed to have been done; that none of the parties to said deed of trust knew or became aware of said mistake in said deed of trust until long after it had been executed and recorded in the recorder's office of St. Louis county; and this defendant avers that it was
220 the object, intention, and desire of the said Hannah Letcher and this defendant in making said deed of 18th of April, 1843, and said deed of trust of January 23, 1845, and also the desire

of the said Mary H., at whose request and for whose gratification they were made, to make provision and settlement for the maintenance and support of the said Mary H. and for the support, maintenance, education, and — her children, then born and thereafter to be born of her body, by this defendant begotten, including said Cora S. and George L. Bobb; and the said Hannah and the said Mary H. and this defendant, at the time of the execution of said deed of trust, in truth and in fact supposed and believed that the operation and effect of said deed of trust was to convey said real estate therein described to this defendant in trust for the use and benefit and as a settlement and provision for the support and maintenance of the said Mary H. and for the support, maintenance, and education of all of the children, then born and thereafter to be born of her body, by this defendant begotten, including said Cora S. and George L., which was the intention and purpose of the parties aforesaid in making and executing said deed and deed of trust; and the said Mary H., Hannah Letcher, and this defendant in truth and in fact remained under and continued to entertain such supposition and belief from date of said deed of trust up to and long after the said deed of trust was recorded in the said recorder's office. This defendant prays that the said Hannah Letcher, now Hannah Stevenson, and her husband, John D. Stevenson, be made parties to this suit, and that said mistake in said deed of trust of January 23d, 1845, be corrected and reformed in accordance with the true intent, object, and desire of the parties aforesaid, by the judg-
221 ment and decree of this court, so that the said real estate described in *in* said deed of trust and all rents, issue-, and profits arising therefrom — the date of said deed of — be held in trust for the use and benefit of all five of said children born of the body of said Mary H., by this defendant begotten, to wit, Charles L., John H., Lucy G., Cora S., and George L. Bobb, share and share alike, subject to the life estate of this defendant as a tenant by the curtesy in that portion of the equitable estate in said property of which his said wife, Mary H., died seized and possessed.

LACKLAND, MARTIN & LACKLAND,
Att'ys for Def't Charles Bobb.

And afterwards, to wit, on the 10th day of December, 1870, the plaintiff filed his reply to the separate answer of Charles Bobb in words and figures following, to wit:

And now comes said plaintiff, by his attorney, and, for reply to so much of the answer of Charles Bobb to the second amended petition as sets up new matter, says that he denies that all the real estate described in said first count of said second amended petition was acquired by said defendant's own individual exertions and the labor of his own hands and the sweat of his own face, as alleged, but avers that that part thereof which was acquired after said marriage was acquired be the joint exertions and labor of said defendant and his said wife, Mary H.; and plaintiff denies that on 18th April, 1843, said defendant was the absolute owner in fee-simple of all of said real estate, as alleged, as she, the said Mary H., wife of said

defendant, had a dower estate therein and her labor and economy had equally with said defendant contributed to the acquisition of the same; and plaintiff further denies that the said
222 Mary H. conceived or became possessed of the idea and belief that said defendant would lose all of his property or become a bankrupt, or that she or her children then born or which might thereafter be born would became penniless or come to want, or that she under that belief became unremitting and persistent in her persuasions and importunities for said defendant to make any disposition of his property to secure a support to her and her children then born or which might thereafter be born, as alleged; and plaintiff denies that upon the motives, reasons, or considerations alleged defendant made said conveyance of April 18th, 1843, or that he was induced to make said deed for the sole purpose of gratifying the desire and *alleging* the unfounded fears or apprehensions entertained by his said wife, as alleged, or that said deed was made with any knowledge or understanding that said real estate or any part thereof should be and remain the absolute property of said defendant or without any trust coupled with or effecting the same, or that it was to be treated or managed by said defendant as his own absolute property, as alleged, or that in accordance with any such agreement or understanding defendant executed said deed, or that defendant had a right to sell or did sell or dispose of any of said real estate for his own use and benefit, as alleged; and plaintiff denies that defendant received the money and notes for sales to Anderson, Deppe, and Rhode as his own absolute property, as alleged, but on the trusts stated in the second amended petition herein. Plaintiff denies that the title to said real estate or any part thereof remained nominally or otherwise in said Hannah for the use or benefit of said defendant, but remained in her on the trusts set out in said second amended petition till the execution of said
223 deed of trust of January 23d, 1845. Plaintiff denies that he collected all the rents of said real estate from September 1, 1858, to May 26, 1862, as alleged, and denies that defendant paid all the taxes, assessments, and charges on said real estate, as alleged, or that the one-fourth part of said real estate held in trust for Mary H. Bobb was or is subject to an estate of tenancy by the curtesy vested in said defendant, but plaintiff avers that by law and by the terms of said deed of trust and by defendant's own acts in relation thereto the life estate of said defendant as a tenant by the *tenancy* is executed; and plaintiff further avers that said Charles Bobb himself so construed said deed of trust in the petition signed and sworn to by him in case No. 135, to March term, 1854, of the St. Louis land court, refer-ed to in said defendant's answer, in which petition he sets out the owners of said trust lands and their respective interests therein, but did not claim or assert for himself any estate by the curtesy therein, as will more fully appear by said record, a certified copy of which has been heretofore filed by this plaintiff, marked Exhibit "A" "A." Plaintiff has no knowledge or information sufficient to form a belief in regard to the alleged lease to Samuel H. Spielman, but denies that the half of the lot seventhly described in said

deed was sold or conveyed to him for $405, but avers that said defendant received a much larger sum therefor.

Plaintiff denies that said defendant paid, laid out, or expended all the rents, issues, and profits or proceeds of sale of said property in improving or making repairs thereon, or paying taxes and expenses thereon, or in making advances to said beneficiaries, as alleged, and denies that any advances were made to plaintiff.

224 Plaintiff denies that he or that all of said beneficiaries often expressed themselves satisfied that the trust had been faithfully performed by defendant, or that the rents, issues, and profits arising from said trust property did not amount to more than the expenditures for improvements, repairs, and taxes and the sums advanced to the *cestui que trusts*, and denies that any sums were advanced to plaintiff or Lucy G. Taylor; and plaintiff avers that the rents and profits of said trust property collected by defendant greatly exceeded all expenditures thereon or advances, if any were made; and plaintiff denies that said defendant made himself a slave, as he alleges, to manage, improve, or repair said trust property to make it in the highest degree profitable to the parties interested therein; and plaintiff denies that the interest of plaintiff and the other beneficiaries is subject to an estate of tenancy by the curtesy in defendant in that portion of said equitable estate of which said Mary H. died possessed.

Plaintiff denies that defendant declining to convey to plaintiff his interest in said trust property when such conveyance was requested before the bringing of this suit was based on the ground now alleged by defendant in his answer, and he denies that the returns of said defendant to the United States assessor for the years 1865, 1866, 1867, and 1868, or defendant's statement of the contents thereof in his answer, are or constitute any evidence against plaintiff or his cobeneficiaries, and avers that defendant's receipts from said trust property for said years were much larger than those return- showed, and his expenditures for said trust property for said years were much less than is shown by said returns.

225 Plaintiff denies that the U. S. income returns for the years 1865, 1866, 1867, and 1868, or any of them, were omitted or not made by defendant at the instance or request or by reason of the strenuous or urgent opposition or objection of plaintiff, as alleged, or that plaintiff made the pretentions, or held the positions, or made the promises or agreements or statements in relation thereto alleged in said answer or any of them; and he also denies the alleged ignorance of defendant of the laws and regulations of Congress, or that defendant confided in any statements or promises of plaintiff, or that defendant was deceived by any representations of plaintiff, or that plaintiff is to blame or in any way responsible for said omissions of defendant in the premises. Plaintiff denies that the roof- on said three houses were old or decayed or in a leaky condition, or that it was absolutely necessary to have new shingles put thereon to preserve said houses or to make them tenantable, as alleged, and denies that defendant managed said trust estate faithfully and properly or solely with a view to promote the best interest-

of those entitled thereto, as alleged, or that defendant has been at all times since the execution of said deed of trust or is now willing to pay all just claims and demands that plaintiff or his cobeneficiaries or others may have against him, or that plaintiff very well knew him to be so, as alleged, and denies that violence, hostility, or bitterness on the part of plaintiff against defendant was the cause of his bringing this suit.

Plaintiff denies that defendant executed the deed of April 18th, 1843, to Hannah Letcher, conveying the property herein described to her for the use and benefit of said defendant, or that the title to the same remained in said Hannah for the same use until the deed of trust of January 23, 1845, was executed by her, or that the sums or amounts mentioned as consideration in said deeds were
226 purely nominal, as alleged, and denies that the only moving case or cause for executing each or either of said deeds was the desire on the part of defendant to gratify the whims or caprices or to remove the unfounded fears of want and starvation on the part of said Mary H., and denies that any such feeling existed in the mind of said Mary H.

Plaintiff denies that the said Hannah executed said deed of trust with the intent or for the purpose of conveying said real estate in trust for the use and benefit of the children of said Mary H. which might thereafter be born, as alleged, and denies that said conveyance was made in order to provide for the support, maintenance, or education of her children, either then born or which might thereafter be born, and denies that it was the intent and purpose in making said deed of trust dated January 23, 1845, to provide for the support, maintenance, or education of any of the said issue or children, but it was made to furnish a separate estate for the children therein named; but plaintiff denies that it was the intent or purpose of said deed to make any provision for any children not born at the date of its execution and not named therein, and denies that the said Mary H., Hannah, or said defendant understood or believed the said deed of trust was so drawn or worded as to car-y out any such intent or purpose or to effect that object, as alleged.

Plaintiff denies that said defendant is entitled to or became invested with an interest and estate of tenancy by the curtesy in the share and portion of the equitable estate held by said Mary H., or that she died seized or possessed thereof, and plaintiff denies that said defendant has any interest in the rents, issues, and profits arising therefrom.

Plaintiff is informed and believes that Irene Bobb, wife of Charles L. Bobb, and one of the defendants herein, is now the legal holder of the note and deed of trust of Charles L. Bobb, described
227 in said answer, for her separate use and exclusive of her husband, the said Charles L. Plaintiff has — knowledge or information sufficient to form a belief whether the houses on lot thirdly described were built at the dates alleged, or when they were built, but he denies that they or any of them were built out of defendant's own money, nor has he any knowledge or information sufficient to form a belief whether the house alleged to have been built in 1845,

on the lot fourthly described, was built in that year, nor when it was built, but he denies that it was built out of defendant's own money, as alleged. Plaintiff avers that in the said proceeding in the St. Louis land court, refer-ed to in defendant's answer, to reform said deed of trust in reference to the power of disposition of said real *real* estate at said defendant's discretion, Cora S. Bobb, now Taylor, and George L. Bobb were parties, although said defendant has omitted to state the fact in his answer.

Plaintiff has no knowledge or information sufficient to form a belief whether or not the house alleged by defendant to have been built on the lot sixthly described in 1844 was built in that year, but he denies that it was built out of defendant's own money.

Plaintiff has no knowledge or information sufficient to form a belief whether or not there was such a *liese* to and contract with said Spielman as to the other half of said lot seventhly described as defendant alleges, but he denies that said defendant conveyed said half to said Spielman for 405 dollars, as alleged, but plaintiff is informed and believes that said defendant conveyed said half of said lot to said Spielman for a much larger sum, and that he collected a much larger sum therefor and interest thereon from the day of sale.

Plaintiff has no knowledge of the alleged deed to Christian
228 Garrel, nor what consideration defendant received from him therefor, but requires proof.

As to the statements of said answer in relation to lot ninthly described, plaintiff has no knowledge or information sufficient to form a belief whether said defendant made the leases alleged to said Shannon and Fife or either of them, nor whether said Fife did not pay or was insolvent, nor whether nothing could be or was made out of him, as alleged, nor whether Shannon succeeded to Fife, nor whether Shannon assigned to Washburn, nor whether defendant paid the two thousand dollars to Shannon or the four hundred and seventy-five dollars to Washburn, as alleged, or any part of said sums, nor whether said defendant paid Shannon in 1854 or Washburn in 1851 any money, nor whether the building on Washburn's portion was removed, as alleged, or whether defendant covenanted to pay for improvements on either of said lots or buy the same at a valuation to be ascertained, as alleged, nor whether defendant built the houses on said lot at the dates alleged, nor whether he has paid, laid out, and expended in taxes, special and general, and in building houses and in making improvements and repairs on said trust property about $77,433.30, but admits that defendant performed labor and work himself and by his own slaves and hands on said trust property in improving and repairing the same amounting to the sum of $3,400, as alleged.

Plaintiff says that said defendant has never rendered any account or statement of his expenditures on said trust property, and he requires proof of the time, manner, and amount of such expenditures and believes that whatever sums have been so expended were expended out of trust funds in defendant's hands.

229 Plaintiff denies that defendant is entitled to the sum of 25,000 dollars for his services as trustee or any other sum

for services as trustee and wholly denies the aggregate of 105,833.30 dollars claimed. Plaintiff denies that defendant has collected only 80,883.73 dollars as he alleges, exclusive of the rent from September 1, 1858, to May 28, 1862, as alleged, but avers that said defendant has collected a much larger sum than he alleges, the exact amount of which plaintiff cannot state, but which he avers is a much larger sum than is alleged. Plaintiff denies that he collected all the rent from September 1, 1858, to May 28, 1862, as alleged, but admits that being on said 1st of September, 1858, a minor under 19 years of age, he did, in the service and by the direction of said defendant, collect a part of the rent between said dates, though he cannot state the exact dates nor amounts, but believes it to have been more than 12,000 dollars, but he denies the allegation of said answer that plaintiff paid over to defendants an amount not exceeding the sum of 5,000 dollars as alleged, but avers that he paid over to defendant a much larger sum than that and larger than 12,000, but whatever sums he did collect he collected as agent of defendant, and paid the same over to him and took his receipt in full therefor, which on the trial hereof plaintiff will produce in evidence, but denies that said receipts will show the amounts of rents collected or paid over as defendant alleges and he denies that he retained the sum of 7,000 dollars or any part thereof, but fully accounted for and paid over to said defendant every dollar he so collected.

Plaintiff says further, in relation to said rents alleged by said defendant to have been collected by plaintiff between the dates aforesaid and not have been accounted for, that under an agreement between plaintiff and defendant, dated 26 May, 1868, a
230 copy of which is herewith filed, marked Exhibit "J. H. B." No. F, the question of plaintiffs liability to account to defendant for any rents collected from said trust property and not paid over was submitted by agreement of plaintiff and defendant to J. S. North and R. S. McDonald, who made a verbal award thereon, among other things, and in compliance with such award and said agreement said defendant executed and delivered to plaintiff his receipts, dated June 17th, 1868, a copy of which is herewith filed, marked Exhibit "J. H. B." No. G. in full of all rents and monies collected by plaintiff from said trust property up to the date of said receipt, and plaintiff now pleads and sets up said agreement, award, and receipt given in compliance therewith as a full, final accord and satisfaction and settlement of the claim set up in said answer.

Plaintiff denies that on or about the first day of September, 1858, or at any other time defendant delivered to him the two books alleged or any book or books containing all the items alleged, and plaintiff never saw or had any knowledge of such books and does not believe said defendant ever had or kept any books containing any full or detailed accounts of receipts and expenditures of said trust property as alleged, and he denies that he retains or withholds from said defendant any book or books of his containing accounts as alleged, and he denies that he has refused to deliver any books he has or had in his possession, and denies that defendant has frequently requested or demanded plaintiff to return any such two

books of accounts as alleged, and denies that defendant is informed or believes that said two books of accounts have been totally destroyed by plaintiff as alleged, for plaintiff avers that he never had any such two books to destroy and never has destroyed any such books as alleged, and denies that defendant's failure
231 or inability to account arose out of the alleged acts of plaintiff in withholding any books of defendant's, for plaintiff denies that he has withheld any such books as defendant states; and plaintiff further denies that the allegation of said defendant's answer "that the amounts thereinbefore mentioned are correct" is true. Plaintiff denies that the defendant received only the sum of 4,810 dollars from said Bosworth, Spilelman and Westendieck, but avers that he received a much larger sum from said parties. Plaintiff denies that said defendant has paid and advanced to plaintiff, as one of the beneficiaries under said deed of trust, 27,500.00 dollars or any part thereof or any sum whatever. Plaintiff admits that he borrowed that sum of said Charles Bobb for ten years from May 24th, 1864, and gave his note therefor, dated 29th day of October, 1864, and payable ten years from the 24th of May, 1864, with eight per cent. interest per annum, payable annually, which interest plaintiff has promptly paid when due. Plaintiff avers that said transaction was strictly a loan by contract and for the interest reserved in said note, and he denies that it was an advance or payment as alleged or can be treated as such; and plaintiff wholly denies that said defendant has paid, laid out, or expended out of said trust funds for the support, maintenance, or education of plaintiff 4,450 dollars, as alleged, or any sum whatever, and denies the aggregate of 31,950 dollars and every part thereof.

Plaintiff has no knowledge or information sufficient to form a belief whether or not said defendant has paid or advanced the sum alleged to Charles L. Bobb as one of the beneficiaries under said deed of trust, as he is informed the parties disagree about the transaction; and plaintiff denies that he has paid, laid out, or expended out of said trust funds for the support, maintenance,
232 or education of Charles L. Bobb 3,150 —; and plaintiff denies that said defendant has paid or advanced to Lucy G. Bobb, as one of the beneficiaries under said deed of trust, 11,415 dollars or any part thereof or any sum whatever; and plaintiff denies that said defendant has paid, laid out, or expended out of said trust funds for her support, maintenance, or education 3,345 dollars or any sum whatever, and denies the aggregate of 14,760, as claimed against the said Lucy G. Bobb.

Plaintiff denies that said defendant, Charles Bobb, holds any promissory note of his for advances, as alleged, but has no knowledge or information sufficient to form a belief how it may be as to the other parties, and plaintiff again denies that defendant has made him any advances on any account whatever, as alleged.

Plaintiff denies that from 1845 to 1862 said defendant was largely in advance to said trust property, as alleged, or was in advance at all, or that up to last-named date he had paid out a large sum of money more than he received for or on account of said property

and denies that after charging said defendant with all the rents and profits arising from said trust property and the amount of the sales of the portions sold and crediting him with the costs of improvements, buildings, repairing, insurance, taxes, &c., as alleged, it will be found that defendant is largely or otherwise in advance to plaintiff and said other beneficiaries, but, on the contrary, plaintiff alleges that an account will show defendant largely indebted to plaintiff and said other beneficiaries, as alleged in the second amended petition herein; and plaintiff denies that defendant advanced him anything on any account whatever, and that there is anything due said defendant for the value of his labor done on said property or his services as trustee or for moneys paid, laid out, or expended in the support, maintenance, or education of said beneficiaries, and plaintiff denies that any of the last-named
233 items are entitled to be taken into account in the statement of an account herein. Plaintiff wholly denies each and every allegation of said defendant's answer in relation to the Kelly and Sillick notes by which he asserts a right or title in himself to the same or to the moneys collected thereon after the date of the conveyance mentioned in the second amended petition.

Plaintiff denies that the conveyance of 26th December, 1843, of the Kelly and Sillick notes was made for the reasons alleged by defendant in his answer, but for the reasons and considerations stated in plaintiff's second amended petition, and plaintiff denies that defendant received the money on said notes as his own or that it was paid to him in satisfaction of debts due him individually, but was received by and paid to him in trust and for the benefit of grantees named in said conveyance of 26 December, 1843, as alleged in said second amended petition, and all allegations of said answer in relation thereto in conflict with the allegations of said second amended petition and this reply or reference thereto are hereby expressly denied.

In answer to said cross-bill of said defendant, Charles Bobb, and of said Cora S. and James K. Taylor and George L. Bobb, plaintiff says that he denies that for the motives or reasons alleged in said cross-bill defendant made the said deed to Hannah Letcher or caused the deed of trust to *him* to be made, and denies that any such reasons or motives in fact existed, and denies that the consideration of said deed and deed of trust were nominal as alleged, and denies that nothing was paid by said Hannah or received by said defendant therefor or that it was so understood as alleged, but avers there was a money consideration for said deeds as well as other good and sufficient consideration, to wit, love and affection
234 on the part of said defendant for his wife and then existing children. Plaintiff denies that all of said real estate prior to the execution of said deed was wholly his own property or made by his own labor, but avers that said Mary H., by her labor and economy, materially aided and contributed to the acquisition of said real estate, and he further denies that the real consideration of said conveyances was to gratify the morbid desires or remove the unfounded fears of want and starvation entertained by said Mary H.

or that she entertained such desires or fears, or that the same was made for the support, maintenance, or education either of the children of said Mary H. and defendant then born or that might thereafter be born to them, but they were made, so far as the children then born were concerned, to furnish them a separate estate. Plaintiff believes that said last-named deed was drawn by said Kretschmar, but he denies that he was ignorant or unlearned in the law or that said Hannah, Mary H., or defendant were ignorant or unlearned in the law, and he further denies that a mistake was made by said Kretschmar in drawing said deed of trust as alleged, but avers that he drew it as instructed, and denies that it was the intention, understanding, or meaning of the parties executing the same that it should include the children that might thereafter be born or that it should include and provide for children which might be born of the body of the said Mary H. subsequent to the execution of the same or for any other purpose than those named therein, and plaintiff denies that said Cora S. or George L. were excluded from all benefits of said deed by reason of the said alleged mistake, but were excluded because said deed did not provide and was not intended to provide for them, and he also denies that it was intended to provide for them by said deed or that it was supposed they were provided for thereby or that none of the parties to
235 said deed of trust knew or became aware of said mistake at any time, as plaintiff wholly denies there was any such mistake as is alleged, and denies that it was the object, intention, or desire of said Hannah Letcher or of said defendant or either of them, in making said two deeds or either of them, or of said Mary H., to make provision or settlement for the support — maintenance of either her children then born or which might thereafter be born of her body by said defendant begotten, including said Cora S. and George L., but it was the desire and intention of the said parties to make a provision and separate estate for the children of defendant and said Mary H. then born and living, and for no others; that said Cora S. and George L. were not intended to be included in or provided for by said deed of trust, as alleged, and plaintiff denies that said Hannah, said Mary H., or said defendant or either of them, at the time of the execution of said deed of trust, in truth or in fact supposed or believed that the operation or effect of said deed of trust was to convey said real estate in trust for the support, maintenance, or education of any children then born or which might thereafter be born of her body, by said defendant begotten, or including said Cora S. and George L., and denies that such was the intent or purpose of the parties aforesaid in making and executing said deed of trust; and plaintiff denies that said Mary H., Hannah, or said defendant, in truth or in fact, remained under or continued to entertain such supposition or belief from the date of said deed of trust up to or long after said deed of trust was recorded, as alleged. Plaintiff alleges that said deed of trust was made and delivered on the 23d day of January, 1845, and that no such claim or pretense of said alleged mistake was ever asserted or set up or made known

to him or to said Charles L. or Lucy G. till since about the
236 commencement of this suit and till the account of said trust has been sought to be inforced herein, twenty-four years and more after the execution of said deed of trust; and plaintiff avers that the laches of said defendant (Charles Bobb) and of said Cora S. and George L. in the matter concludes him and them and bars him and them from any relief in the premises. Plaintiff avers further that on the 6th day of March, 1854, the said Charles Bobb, as trustee under said deed of trust and as father and guardian of his children, and the said children, to wit, Charles L., plaintiff; Lucy G., Cora S., and George L., as copetitioners with the said Charles Bobb, and after the death of said Mary H. Bobb, filed their petition in the St. Louis land court against John D. Stevenson and Hannah, his wife, formerly Hannah Letcher, said suit being No. 135 of returns to March term, 1854, of said land court, to have said deed of trust reformed so as to give said Charles Bobb, trustee, power to sell at his own discretion, alleging a mistake therein in that particular; and in and by said petition the said Charles Bobb and his copetitioners alleged the interests of the beneficiaries under said deed of trust to be as the same are stated in the second amended petition herein, as follows, to wit, the interest of Charles L., plaintiff, and Lucy G. to be each three-tenths thereof and the interest of Cora S. and George L. to be each one-twentieth thereof; and in and by said petition it was further alleged and declared that "it was the avowed intention and — of said parties" (meaning said parties to said deed of trust), "and so understood by and between them before the execution of said deed as aforesaid, that the said real estate hereinbefore described should be conveyed by the said Hannah to the said Charles Bobb, as trustee, for the sole, separate, and exclusive use, benefit, and behoof of the said Mary H. Bobb, Charles L., John H., and Lucy G. Bobb, their heirs and assigns forever."

237 And plaintiff avers further that the said petition was signed and sworn to by said defendant, Charles Bobb, and each and all of said children, to wit, Charles L., plaintiff, Lucy G., Cora S., and George L., were parties to said suit, and in said suit a decree was made in accordance with the prayer of said petition and in no other way; and plaintiff says the said deed of trust cannot be again reformed, and he pleads and sets up said decree and suit or proceedings as an estoppel on said defendant, Charles Bobb, and all the parties to said suit and decree; a copy of which petition, record, and decree is filed herewith and marked Exhibit "A A," and is set up and plead by plaintiff as a full and complete estoppel upon said defendant and to the reformation of said deed of trust prayed for by said defendant, Charles Bobb, and plaintiff denies that said defendant is entitled to any of the relief prayed for in his answer or cross-bill.

And afterwards, to wit, on the 4th day of February, 1871, defendants Lucy G. Taylor and William F. Taylor filed their answer to the second amended petition and to the cross-bill of Charles Bobb, George L. Bobb, James K. and Cora S. Taylor in words and figures

following, to wit: These defendants, William F. Taylor and Lucy G., his wife, formerly Lucy G. Bobb, for answer to the second amended petition of plaintiff say: As to the matters stated in the first count of said petition, that the said count and the matters and things therein as stated they believe to be true, and they pray that said Charles Bobb, one of the defendants herein, may be required to account for the rents, issues, and profits of said real estate and for the proceeds of the lots and real estate by him sold, and that upon said accounting he may be adjudged to pay to the said Lucy whatever sums may be found due her, and that he be ad-
238 judged to convey to her the undivided three-tenths of the said real estate remaining unsold; and they pray that upon said accounting said Charles Bobb be required to account with the annual rests, and that upon the annual balances he be charged with interest at the rate of ten per cent. as the natural guardian and trustee of the said Lucy G. Taylor. For answer to the second count of said petition, they say that they believe the said count and the matters and things therein stated to be true and they join in the prayer of the count.

And as to so much of the answer of said Charles Bobb to said second amended petition as alleges that he has paid to said Lucy G. the sum of $11,415, they deny that he has paid said Lucy said sum of $11,415 or any part thereof on account of her interest in said real estate or of the rents, issues, and profits thereof, and they deny that said Charles Bobb paid, laid out, and expedded out of said trust funds for her support, maintenance, and education the sum of $3,345, as alleged in said answer, or any portion thereof, and they say that, as the father of the said Lucy G., the said Charles Bobb had no right in law to charge her with the costs of her support, maintenance, and education.

And for answer to the cross-bills of said Charles Bobb, Geo-ge L. Bobb, Cora S. and James K. Taylor, these defendants adopt the answer of the plaintiff, John H. Bobb, as setting forth the defence of the said Lucy G. to said cross-bills, and say that they bel-eve the matters stated in said answer of said John H. Bobb to be true, and they say by virtue of the judgment and decree in said answer set forth all the parties to said decree are concluded.

LUCY G. TAYLOR AND
WILLIAM F. TAYLOR,
By WHITTELSEY, *Att'y.*

And at the October term, A. D. 1871, of said circuit court the following proceedings were had in this cause, to wit:

239 JOHN H. BOBB
vs.
CHARLES BOBB, CHARLES L. BOBB and IRENE BOBB, His Wife; William F. Taylor and Lucy G. Taylor, His Wife; James K. Taylor and Cora S. Taylor, His Wife; George L. Bobb, a Minor; John D. Stevenson and Hannah Stevenson, His Wife.

SATURDAY, *November 4th*, 1871.

Now come the parties, by their attorneys, and this cause having been heretofore submitted to the court on the pleadings and evidence, and the court, being now fully advised of and concerning the same, doth adjudge that under the deed of Hannah Letcher to Charles Bobb, as trustee, dated January 23, 1845, the plaintiff, John H. Bobb, and the defendant- Charles L. Bobb and Lucy G. Bobb, now Lucy G. Taylor, each acquired an equitable estate in fee in five-twentieths of the lands in said deed described, and that Mary H. Bobb, deceased, took an equitable estate in fee in five-twentieths of said lands, and that on the death of said Mary H. Bobb, on May 18th, 1853, the said five-twentieths descended to her issue, Charles L. Bobb, John H. Bobb, Lucy G. Bobb, Cora S. Bobb, and George L. Bobb, each taking one-twentieth in fee subject to the life estate of their father, Charles Bobb, as tenant by the courtesy in said five-twentieths, and the court doth further adjudge and decree that the said Charles Bobb has held said lands as trustee since the said January 23, 1845, and that as such trustee he is liable to account to the said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor for their shares of said rents and profits of said real estate and for the proceeds of the lands sold by him as trustee from said January 23, 1845, up to the time the receiver was appointed in this cause, to wit, Feb'y 8th, 1870, and the court doth further order and adjudge that the injunction heretofore granted in this cause be made perpetual,
240 and that the said Charles Bobb do not in any manner intermeddle with said trust estate, and the court doth further order and adjudge that the legal title to the lands and tenements in said deed of Hannah Letcher to Charles Bobb remaining unsold be vested in the said John H. Bobb, Charles L. Bobb, Lucy G. Taylor, Cora S. Taylor, and George L. Bobb, subject to the life estate of Charles Bobb by curtesy, as hereinbefore declared, in proportion to their respective rights and interests, as above declared, and the court doth further order that this cause be referred to R. E. Rombauer to take and state an account in accordance with this decree between the parties hereto, to wit, John H. Bobb, the plaintiff, and the defendant- Charles L. Bobb and Lucy G. Taylor and her husband, William F. Taylor, and the said Charles Bobb, as trustee of the said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor aforesaid, and the court doth further order and direct that in taking and stating said account said referee commence on the 23 January, 1845; that in taking and stating said account said Charles Bobb be charged, as trustee, with all the rents, issues, and profits of said estate and with the proceeds of all lands sold after January 23, 1845, and up to February 8, 1870, and that he be credited, as trustee, with all the

moneys paid, laid out, and expended for taxes, general and special, for repairs done on said premises and for improvements on said premises between the dates last aforesaid and for all lawful charges and expenses incurred by him in the management and care of said property, and that he be credited, as tenant by the curtesy, with one-fourth the rents, issues, and profits of said estate from the 18th day of May, 1853, less such moneys or proportions of moneys laid out and expended for taxes, repairs, improvements, and lawful charges and expenses incurred in the management of said property as were expended by him as such tenant or which are properly chargeable against him as tenant for life of one-fourth of said estate, and
241 that he be also credited with such sums as may appear to have been paid or advanced by said trustees to the said John H., Charles L., and Lucy G. on the faith and credit of said trust estate, and that the referee ascertain and report the amount of indebtedness due or owing by each of said distributees to the said trustee, and said referee is directed to report what sums set up in the answer of said Charles Bobb were paid or advanced to the said John H., Charles L., and Lucy G. on the faith and credit of said estate, and the said referee is directed to report as to the compensation, if any, to which said Charles Bobb may appear to be entitled for the management of said trust estate; said referee is further directed to state the account between the parties so as to show what may be due to each of them, the said John H., Charles L., and Lucy G., allowing interest upon the annual balances at six per cent. and at ten per cent., and also what sums will be due to said beneficiaries respectively, making annual rests upon the net annual balances at the rate of six per cent. and ten per cent. per annum; and said referee is further directed to take and state an account between the said Charles Bobb, as trustee, and the said John H., Charles L., and Lucy G., Cora S., and George L., upon the basis that said Charles took no estate by the curtesy in the share owned by Mary H. Bobb, and that upon her death, on May 18, 1853, her share passed directly to her children and issue as above stated; and the court doth further adjudge and decree that said Charles Bobb is liable to account to the said John H. and Charles L. for the moneys received for their respective shares of the notes of John J. Anderson in the petition described, and said referee is directed to state an account between the parties allowing one-fourth to said John H. Bobb and one-fourth to said Charles L. Bobb, and that in stating said
242 account he make annual rests, charging interest at six and ten per cent. per annum; and the court doth further adjudge that said Charles Bobb is liable to account to said John H. Bobb and Charles L. Bobb for their share of the moneys received upon the notes of John Kelly and Sands E. Selleck in the petition described; and said referee is directed to take and state an account between the parties of what is due upon the same, allowing the said John and Charles L. each one-third, and that in stating said account he make annual rests, charging interest at ten per cent. and at six per cent., and said referee is directed to report the evidence presented before him with his rulings upon all questions by him decided, and all

other matters are reserved until the filing of the report of said referee.

And afterwards, to wit, at the June term, 1876, of said court the following further proceedings were had in said cause, to wit:

SATURDAY, *June 17th*, 1876.

Now, at this day, comes the plaintiff and suggests to the court that Charles L. Bobb, one of the defendants herein, departed this life on or about the first day of June, A. D. 1876, and which suggestion being found by the court to be the truth, and Martrom D. Lewis, administrator of the estate of said Charles L. Bobb, coming into court and asking to be made a party defendant as administrator of the estate of the said Charles L. Bobb, and it appearing to the court that the said Martrom D. Lewis has been duly qualified as administrator of the estate of the said Charles L. Bobb according to law, and it further being made to appear to the court that the said Charles L. Bobb died, leaving, as his only children and heirs-at-law, Charles H. Bobb and Philip M. Bobb, who are minors, and that as such children they inherited all his interest and estate in the property which is the subject of said action, it is ordered that this action be, and the same is hereby, revived
243 and continued as to the said Charles L. Bobb against and in the name of the said Martrom D. Lewis, administrator of the estate of the said Charles L. Bobb, deceased, as defendant, and that the said administrator be, and he is hereby, substituted as defendant in the place and stead of the said Charles L. Bobb, and that the answer of said Charles L. Bobb be deemed the answer of the said defendant so substituted, and that the said action be continued against the said representative of the said deceased, Charles L. Bobb, and that proceedings herein be had in all respects against said Martrom D. Lewis as if he had been an original party to the action; and it being further suggested to the court that Irene Bobb was at one time the wife of said Charles L. Bobb and is surviving the said Charles L. Bobb, the court doth order that a summons be issued, directed to the said Irene Bobb, Charles H. Bobb, and Philip M. Bobb, to show cause why the said action should not stand revived against them as heirs of the estate of the said Charles L. Bobb or as having an interest in his estate, and proceed against them as such, and be in the same plight and condition that the same would have been if the same had not been liable to abate by the death of the said Charles L. Bobb, and why the order and proceedings in this suit may not be carried on and prosecuted as to them in the same manner as between the parties to the suit as originally instituted, and that such summons be issued returnable to the next term of this court, but with leave to said parties to make their voluntary appearance in said suit at an earlier day, as they may be advised.

Affidavit of John H. Bobb. Filed Wednesday, June 21st, 1876.

Now, at this day, come Irene Bobb, widow of Charles L. Bobb, and enters her appearance herein voluntarily upon the summons heretofore issued herein, to her directed, and also comes
244 Charles H. Bobb and files his petition for the appointment of a guardian *ad litem* in his behalf in this cause; and the said Irene Bobb files her petition, praying this court to appoint a guardian *ad litem* in behalf of Philip M. Bobb, he being an infant under the age of fourteen years; and the court being satisfied that the said Charles H. Bobb is a minor, but over the age of fourteen years, and that the said Philip M. Bobb is a minor, but under the age of fourteen years, of the age of eight years, and Abraham Siegel filing his written consent to act as the guardian *ad litem* of the said infant parties; and the court being further satisfied that the said Abraham Siegel is a proper and competent person to become such guardian, the court doth therefore order that the said Abraham Siegel be, and he is hereby, appointed guardian *ad litem* for the said Charles H. Bobb and Philip M. Bobb, and authorized and directed to appear and defend on their behalf the said action; and thereupon the said Abraham Seigel in open court enters his appearance as guardian of the said infants, Charles H. Bobb and Philip M. Bobb, and files answer in behalf of said infant defendants; whereupon, on motion of the plaintiff's attorney, the said Irene Bobb, Charles H. Bobb, and Philip M. Bobb consenting thereto, it is now ordered by the court that the said suit do now forthwith stand revived and continued against them, the said Irene Bobb, Charles, H. Bobb, and Philip M. Bobb, and be in the same plight that the same would have been in if the said Charles L. Bobb had not deceased, and that the orders and proceedings in this cause be carried on by and between the said parties, plaintiff and defendant, as before.

And afterwards, to wit, on June 21st, 1876, the said defendants, Irene Bobb, Charles H. Bobb, and Philip M. Bobb, filed their answers in words and figures following respectively, to wit: I
245 hereby voluntarily enter my appearance in the above-entitled cause and consent that the same may stand revived and be continued against me as wife formerly of Charles L. Bobb, one of the defendants in the above-entitled cause, and who deceased on or about the first day of June, A. D. 1876, but not wife at the time of the death of said Charles L. Bobb.

IRENE BOBB.

The answer of Charles H. Bobb, child and heir-at-law of Charles L. Bobb, one of the original defendants herein, but who has since deceased, and against whom a summons has been issued to show cause why the above-entitled suit should not stand revived against him as son and heir of the said Charles L. Bobb and an infant under the age of twenty-one years, by Abraham Siegel, his guard, ian *ad litem.*

In answer to the said summons, I, Charles H. Bobb, by Abraham Siegel, my guardian, say as follows: That so far as proper I desire that the answer of my said father, Charles L. Bobb, heretofore filed in this cause, be deemed and taken as my own, but that I am an infant under the age of twenty-one years—that is to say, of the age of seventeen years—and I submit my rights and interests in the matters in question in this cause to the care and protection of this honorable court

CHARLES H. BOBB,
By ABRAHAM SIEGEL,
His Guardian ad Litem.
H. A. CLOVER,
His Attorney.

The answer of Philip M. Bobb, son and heir-at-law of Charles L. Bobb, one of the original defendants herein, but who has since deceased, and against whom a summons has been issued to show cause why the above-entitled suit should not stand revived
246 against him as son and heir of the said Charles L. Bobb and an infant under the age of twenty-one years, by Abraham Siegel, his guardian *ad litem.*

In answer to the said summons I, Philip M. Bobb, by Abraham Siegel, my guardian, say as follows: That so far as proper I desire that the answer of my said father, Charles L. Bobb, heretofore filed in this cause, be deemed and taken as my own, but that I am an infant under the age of twenty-one years—that is to say, of the age of eight years—and I submit my rights and interests in the matters in question in this cause to the care and protection of this honorable court.

PHILIP M. BOBB,
By ABRAHAM SIEGEL,
His Guardian ad Litem.
H. A. CLOVER, *Att'y.*

And afterward, at the June and October terms, A. D. 1876, of said court the following further proceedings were had in said cause, to wit:

FRIDAY, *July 7th*, 1876.

It is ordered by the court that the motions of George L. Bobb, defendant, to set aside the absolute order of revivor heretofore made in this cause as against the heirs and legal representatives of the deceased defendant, Charles L. Bobb, be sustained; and it appear-

ing to the court from the affidavit of the plaintiff, John H. Bobb, heretofore filed in this cause, that Irene Bobb is the widow and Charles H. Bobb and Philip M. Bobb are the only surviving children and heirs-at-law of the said Charles L. Bobb, deceased, and the said Irene Bobb having voluntarily entered her appearance in this causes as party defendant herein, and the said Charles H. Bobb, a minor, and Philip M. Bobb, also a minor, having respectively in writing requested the appointment of Abraham Siegel as guardian *ad litem* for them, the said minors in this cause, who have been duly served with process by the sheriff, heretofore issued to them in
247 this cause, returnable at the next October term; and the said Abraham Siegel having filed his written consent to act as such guardian *ad litem* for said minors, respectively, and having answered for said minors, respectively, in said cause, and Martrom D. Lewis, public administrator of St. Louis county, in charge of the estate of said Charles L. Bobb, deceased, having also voluntarily entered his appearance as a defendant in this cause, it is therefore further ordered by the court that this action be revived and proceeded against said Martrom D. Lewis, public administrator of St. Louis county, in charge of the estate of said Charles L. Bobb, deceased, and against Irene Bobb, widow, and against said Charles H. Bobb and Philip M. Bobb, minor children and heirs-at-law of the said Charles L. Bobb, deceased, and that the said cause be and proceed as against said representatives in the same plight and condition as it stood at the time of the death of the said Charles L. Bobb in all respects, unless good cause be shown against such revivor at the next term of this court and within the first four days of said term by the defendants Charles Bobb, George L. Bobb, and James K. Taylor and Cora Taylor, his wife, or either of them; and it is further ordered that a copy of this order be served upon the said defendants last named, requiring them and each of them to show cause, if any there be, within the first four days of the next term of this court why this action should not be so revived as aforesaid, and that in default of such cause, shown within said time, this action shall stand revived against the said heirs and representatives of said Charles L. Bobb, deceased, and proceed against them in all respects as if they had been originally parties to this action.

248 MONDAY, *November 6th*, 1876.

On considering the matters stated and set forth by the defendants Charles Bobb and George L. Bobb in the response filed by them to the order heretofore made in this cause, conditioned for the revival of this action against the heirs and legal representatives of Charles L. Bobb, deceased, it is now ordered by the court that the said order heretofore made herein do stand absolute against Martrom D. Lewis, administrator of the estate of Charles L. Bobb, and against Charles H. Bobb and Philip M. Bobb, minor children and heirs-at-law of the said Charles L. Bobb, deceased, and that the said suit and proceedings do stand absolutely revived against the said Martrom D. Lewis, public administrator of St. Louis county, having in charge the estate of said Charles L. Bobb, and against the said Charles H. Bobb

and Philip M. Bobb, and be in the same plight and condition they were in at the time of the death of the said Charles L. Bobb, but that the said suit do not stand revived as to Irene Bobb, the former wife of the said Charles L. Bobb, and from whom she was divorced in the lifetime of the said Charles L. Bobb, she having no interest whatever in the result of these proceedings.

In the Circuit Court, City of St. Louis, June Term, 1878.

JOHN H. BOBB
vs.
CHARLES BOBB, WILLIAM F. TAYLOR and LUCY G. TAYLOR, His Wife; James K. Taylor and Cora S. Taylor, His Wife; George L. Bobb, John D. Stevenson and Hannah Stevenson, His Wife; Irene Bobb, Philip M. Bobb, a Minor, Appearing by Abraham Siegel, His Guardian *ad Litem;* Charles H. Bobb, a Minor,
249 Appearing by Abraham Siegel, His Guardian *ad Litem*, and Martrom D. Lewis, Public Administrator of the City of St. Louis, in Charge of the Estate of Charles L. Bobb, Deceased. } (13809.)

SATURDAY, *June 15th*, 1878.

Now, at this day, come the said parties, the said John H. Bobb, plaintiff, appearing by his attorneys of record, and the said Charles Bobb, William F. Taylor and Lucy G. Taylor, his wife; James K. Taylor and Cora S. Taylor, his wife; George L. Bobb, John D. Stevenson and Hannah Stevenson, his wife; Irene Bobb and Martrom D. Lewis, public administrator of the city of St. Louis, in charge of the estate of Charles L. Bobb, deceased, by their attorneys of record, respectively; and the said Philip M. Bobb, by Abraham Siegel, his guardian *ad litem*, and the said Charles H. Bobb, by Abraham Siegel, his guardian *ad litem*, and upon opening of the matter this present day unto this court, by Mr. Hitchcock, of counsel for plaintiff, it was alleged that it appears by the report of Roderick E. Rombauer, Esquire, heretofore appointed referee in this behalf, whose report was in part confirmed by the court, and also by the report of B. Gratz Brown, Esquire, referee herein, which said last-mentioned report has been in all things confirmed by this court, that an account has been taken by said referee of all and singular the matters touching which by the former orders of this court in this cause an account was ordered to be taken, and that this cause is now ready for final hearing. It was thereupon prayed that the court do now proceed to the final hearing of this cause, and that by the final decree of this court herein the rights and interests of the said several parties in this behalf be ascertained and declared, as well in respects of the lands and tenements mentioned and described in the deed of Hannah Letcher to Charles Bobb, as trustee, dated the 23d
day of January, in the year of our Lord 1845, being the same
250 deed heretofore recorded in Book O No. 3, page 240, and following, in the office of the recorder of deeds of the county of

St. Louis and State of Missouri, as in respect of the sums of money for which the said Charles Bobb, defendant, by reason of the trusts in said deed declared is liable to said plaintiff and to said other parties defendant respectively. Whereupon, the said cause being submitted to the court and upon the inspection of the said reports of the said referee in this behalf and upon hearing of what was alleged in behalf of the said several parties, plaintiff and defendants respectively, the court doth declare, adjudge, and decree that the legal title to all and singular the said lands and tenements mentioned and described in said deed from Hannah Letcher to Charles Bobb, as trustee above mentioned, and which were vested in said Charles Bobb thereunder at the commencement of this suit, being the same lands hereinafter more particularly described, be, and the same is hereby, divested, except as hereinafter declared, out of him, the said Charles Bobb, without further act to be done by him, and that as well the legal title to said lands and tenements as the use or equitable estate therein be, and the same are hereby, vested in said John H. Bobb, Cora S. Taylor, George L. Bobb, Charles H. Bobb, Philip M. Bobb, as tenants in common thereof in fee, and the defendant Charles Bobb is tenant in common thereof for life—that is to say, in the several interests and proportions next thereinafter mentioned, namely, as to ($\frac{5}{20}$ths) five-twentieths of said lands and tenements, in the said John H. Bobb, as tenant in fee thereof in his own right, and as to the other ($\frac{5}{20}$ths) five-twentieths thereof, in the said John H. Bobb, as tenant in fee thereof, as assignee of the defendant Lucy G. Taylor, and as to ($\frac{5}{40}$ths) five-fortieths thereof, in the defendant Philip M. Bobb, as tenant in fee thereof, as heir-at-
251 law of his father, Charles L. Bobb, deceased, formerly defendant herein, and as to other ($\frac{5}{40}$ths) five-fortieths thereof, in the defendant Charles H. Bobb, as tenant in fee, as heir-at-law of his father, the said Charles L. Bobb, and as to the remaining ($\frac{5}{20}$ths) five-twentieths of said lands and tenements, it is further ordered, adjudged, and decreed that the same be, and are hereby, vested in the said defendant Charles Bobb, as tenant thereof by the courtesy for and during his natural life, with remainder in fee, as to ($\frac{1}{5}$th) one-fifth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of the said lands, in the said John H. Bobb, in his own right, and as to one other (5th) fifth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of the said lands, in the said John H. Bobb, as assignee of Lucy G. Taylor, and as to one other (5th) fifth of said ($\frac{5}{20}$th-) five-twentieths, being ($\frac{1}{20}$th) one-twentieth of said lands, in the defendant George L. Bobb, and as to one other (5th) fifth of said ($\frac{5}{20}$ths) five-twentieths, being one-twentieth ($\frac{1}{20}$th) *one-twentieth* of said lands, in the defendant Cora S. Taylor, and as to ($\frac{1}{10}$th) one-tenth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{40}$th) one-fortieth of said lands, in the defendant Philip M. Bobb, as heir-at-law of the said Charles L. Bobb, deceased, and as to the remaining ($\frac{1}{10}$th) one-tenth of said ($\frac{5}{20}$ths) five-twentieths, being ($\frac{1}{40}$th) one-fortieth of said lands, in the defendant Charles H. Bobb, as heir-at-law of the said Charles L. Bobb, deceased; and the court doth declare that the said lands so hereby vested in the parties, respectively, in the said several interests

and proportions above stated, are the following—that is to say, the following-described pieces, parcels, or lots of ground situate, lying, and being in the city and county of St. Louis, in the State of Missouri, viz:

I. A lot of ground commencing at the northeast corner of Walnut and Seventh streets, containing on Walnut street seventy-four
252 feet by one hundred and thirty-two feet deep, bounded east by property of Edward Brooks, west by Seventh street, south by Walnut street, north by an alley, and containing seventy-four feet in the rear, said lot being in block number one hundred and thirty-two and being part of a lot of ground conveyed by Isaac A. Letcher and wife to said Charles Bobb by deed dated the 18th day of January, 1827, recorded at the recorder's office of St. Louis county, in Book S, page 219.

II. A lot of ground commencing at a point distant from the south side of Market street two hundred and ninety feet and from the west side of Seventh street three hundred and twenty feet, which gives the southeast corner of the lot, thence running west on the north side of Walnut street eighty feet; thence north one hundred and thirty-six feet to an alley; thence along the south side of said alley eighty feet; thence south one hundred and thirty-six feet to the point of beginning, being in block number one hundred and eighty-nine.

III. A lot of ground beginning one hundred and five feet west of Eighth street on Walnut street at a point being two hundred and ninety feet distant from Market street, thence westwardly forty-five feet on Walnut street; thence northwardly one hundred and thirty-six feet to an alley; thence eastwardly on said alley forty-five feet; thence southwardly parallel with Eighth street one hundred and thirty-six feet to the place of beginning, said lots being in block one hundred and eighty-nine and being part of a lot of ground conveyed by Isaac A. Letcher and wife to said Charles Bobb by deed dated the 10th day of December, 1835, recorded at the aforesaid recorder's office, in Book Y, page 468 and following.

253 IV. A lot of ground commencing at a point two hundred and seventy feet from the west side of Seventh street and from the south side of Market street one hundred and fifty-four feet, which gives the northwest corner of the lot, thence running east sixty-seven feet; thence south twenty feet; thence west and parallel with said north line sixty-seven feet; thence north on the east side of Eighth street twenty feet to the place of beginning.

V. A lot of ground commencing at a point of the north side of Walnut street distant one hundred and fifty-nine feet from the west side of Seventh street, thence running north and parallel with said Seventh street one hundred and thirty-six feet to an alley; thence west along on the south side of said alley forty-four feet; thence south one hundred and thirty-six feet; thence on Walnut street forty-four feet to the point of beginning, being in block number one hundred and eighty-five, they being the same pieces, parcels, or lots of ground conveyed to her, the said H. Letcher, by said Charles Bobb and wife by deed dated the eighteenth day of April, eighteen

hundred and forty-three, recorded at the recorder's office of St. Louis county, in Book C No. 3, page 307 and following.

And the court doth further adjudge and decree that the respective rights and interests of the defendants George L. Bobb and Cora S. Taylor are as set forth in this decree and are not other or different, and the interlocutory decree heretofore rendered as to their said rights and interests is in all things hereby confirmed.

And it is further ordered that Samuel D. Porter, heretofore appointed receiver in this cause, do forthwith make report of his proceedings as such, and that the said receiver, with and as part of said report, do file in this cause complete accounts of all moneys received and payed out by him in this behalf since the date of his last
254 report herein, showing all moneys received and disbursed by him and on what account, and that the said receiver forthwith pay and deliver into court to the credit of this cause all moneys and securities now remaining in his hands as such receiver, less a deduction therefrom of (4) four per centum upon the amounts of all moneys received by him for his commissions on rents and other sums by him collected, and the additional sum of $2,577.52 (twenty-five hundred and seventy-seven and fifty-two one-hundredths dollars), such making his full compensation for his services as receiver in this behalf the sum of six hundred dollars per annum, the said parties hereto or either of them to be at liberty to file exceptions to the said report of said receiver and to the accounts to be filed or heretofore filed by him in this behalf as such.

And it is further ordered, adjudged, and decreed that of the moneys and securities heretofore collected and held by said receiver and to be paid into court by him as aforesaid the said plaintiff is entitled to ($\frac{5}{20}$th-) five-twentieths thereof in his own right and to other ($\frac{5}{20}$th-) five-twentieths thereof as assignee of Lucy G. Taylor, defendant herein, the note for ($2,000) two thousand dollars heretofore given by said Lucy G. Taylor to said receiver under the orders of this court for money loaned to her out of said fund to be received by said plaintiff at the full amount thereof on account of her interest in said fund heretofore assigned to him, and that of said moneys and securities the defendant Martrom D. Lewis, administrator of the estate of Charles L. Bobb, deceased, is entitled to other ($\frac{5}{20}$th-) five-twentieths thereof as assets of said estate, but including as part thereof, nevertheless, at the full amount thereof a certain note for $2,000, dated December 12th, 1874, hereinafter mentioned, and which
255 was heretofore made by said Charles L. Bobb to said receiver for money loaned by said receiver to said Charles L. Bobb out of said fund under the order of this court, the said note and unpaid interest notes therewith hereinafter mentioned to be received by said defendant Lewis at the full amount thereof as part of said assets, and also including as part thereof the sum of nine hundred and fifty-two dollars and forty-five cents ($952.45) heretofore by order of this court paid out of the moneys in the hands of the receiver to him, the said Martrom D. Lewis, on account of the interest of the estate of the said Charles L. Bobb in said fund; and it is further ordered that the remainder of the moneys to be ac-

counted for and paid into court by said receiver as aforesaid and to which the defendant Charles Bobb would be entitled in respect of his interest as tenant by the curtesy in said lands and tenements be applied to the payment of the costs of this cause so far as the same shall be sufficient therefor, and if any portion of the said remainder of said moneys shall remain after the payment of said costs that the same be applied *pro rata* to the satisfaction of the amounts for which, as hereinafter declared, said defendant, Charles Bobb, is liable to said plaintiff in his own right and as assignee of Lucy G. Taylor and to said defendant Lewis, as administrator of the estate of said Charles L. Bobb, deceased, in proportion to said amounts respectively; and whereas in the account heretofore taken in this case by Roderick E. Rombauer, Esquire, referee, the defendant Charles Bobb has claimed and received credit for the full amount, including all interest unpaid thereon, of a certain note for ($27,500) twenty-seven thousand five hundred dollars heretofore made by the plaintiff, John H. Bobb, and delivered to said defendant, Charles Bobb,
for moneys advanced by him, the said defendant, to the said
256 plaintiff on the faith and credit of the trust estate, which note bears date October 29th, A. D. 1864, and is filed as an exhibit in this cause, it is therefore ordered, adjudged, and decreed that the said note has been fully paid and satisfied, and that the same be delivered up by the clerk of this court to the said plaintiff for cancellation; and whereas in the said account taken before the said referee said defendant, Chas. Bobb, also claimed and received credit for the full amount of a certain other note made by the defendant Lucy G. Taylor bearing date the 15th day of March, A. D. 1866, for the sum of ($4,000) four thousand dollars, and also claimed and received credit for the full amount of four other notes made by said Lucy G. Taylor and William F. Taylor, all dated February 3d, 1869, one of said notes being for the sum of ($5,000) five thousand dollars and the remaining notes for the sum of ($250) two hundred and fifty dollars each, all which said notes are filed as exhibits in this cause, it is therefore ordered, adjudged, and decreed that as well the said note for $4,000 as the said note for $5,000 and the said three notes each for $250 made by said Lucy G. Taylor and William F. Taylor, as aforesaid, are fully satisfied, and that the said notes and each of them be delivered by the clerk of this court to the said Lucy G. Taylor and William F. Taylor for cancellation; and whereas the said note for ($5,000) five thousand dollars and said three notes for ($250) two hundred and fifty dollars each, above mentioned, were secured by a certain deed of trust, also dated the 3d day of February, A. D. 1869, made by said Lucy G. Taylor and her husband, William F. Taylor, and Charles Bobb, as trustee, and recorded in Book 372, at page 367 thereof, in the office of said recorder of deeds, in which deed William C. Jamison was made trustee, it is further declared, adjudged, and decreed that the said deed of trust be, and
the same is hereby, satisfied and the lien thereof released
257 without further act to be done by any party thereto; and whereas it further appears from the said report of said Rod-

erick E. Rombauer, referee herein, that in the said account before him taken said defendant, Charles Bobb, also claimed and received credit as against Charles L. Bobb, heretofore a defendant herein, now deceased, for the full amount, including all interest unpaid thereon, of a certain note made by said Charles L. Bobb, dated the 20th day of August, A. D. 1869, payable one year after date, for the sum of ($10,846) ten thousand eight hundred and forty-six dollars, which said note is now on file as an exhibit in this cause, it is therefore ordered, adjudged, and decreed that the said note last mentioned is fully satisfied and paid and that the said note be delivered by the clerk of this court to the defendant Martrom D. Lewis, administrator as aforesaid, for cancellation.

And whereas heretofore, pursuant to the orders of this court, the said Samuel D. Porter, receiver in this behalf, loaned to said Charles L. Bobb, formerly a defendant herein, the sum of ($2,000) two thousand dollars out of the trust fund held by said receiver, for which sum said Charles L. Bobb executed and delivered to said receiver his certain notes, being one principal note for ($2,000) two thousand dollars, dated December 12th, A. D. 1874, payable three years after date, together with six interest notes, each for ($100) one hundred dollars, all of the date last aforesaid and payable respectively in six, twelve, eighteen, twenty-four, thirty, and thirty-six months after date, all of said notes bearing interest after maturity at (10) ten per cent. per annum, of which notes the said principal note for ($2,000) two thousand dollars and said (4) four interest notes last maturing now remain unpaid in the hands of said receiver, it is therefore ordered, adjudged, and decreed that upon delivery of said notes into court by said receiver, as here-
258 inbefore ordered, the said last-mentioned principal note and interest notes unpaid be delivered to and received by Martrom D. Lewis, as administrator of the estate of said Charles L. Bobb, at the full amount thereof, on account of the interest of said estate in the trust fund held by said receiver, as hereinbefore provided for, and that the receiver do cause the deed of trust upon the property of the said Charles L. Bobb, securing the said loan to be properly released of record; and it appearing to the court in respect to the trust estate heretofore vested in the said defendant, Charles Bobb, of and in the said lands described in said deed from Hannah Letcher to Charles Bobb, as trustee, dated January 23d, 1845, and in respect of the rents, issues, and profits of said estate and of the proceeds of lands sold by said Charles Bobb, as trustee, and also in respect of the shares of said plaintiff, John H. Bobb, and said defendant, Charles L. Bobb, deceased, in the moneys received by said trustee upon certain notes of John J. Anderson and John Kelly and Sands E. Selleck in the petition described and also in respect of the services rendered in that behalf by said defendant, Charles Bobb, as trustee; that upon the accounting which has been had and taken in this cause under the orders of this court between the said Charles Bobb, as trustee, and the beneficiaries under said trust after charging the said Charles Bobb, as such trustee, with all the rents, issues, and profits of said trust es-

tate with which he is properly chargeable, and with the proceeds of lands sold by him after January 23d, 1845, and with the proceeds of said notes made by said Anderson, Kelly, and Selleck, and after crediting him, the said Charles Bobb, with all moneys paid, laid out, and expended for taxes, general and special, and for repairs done on said premises and for improvements on said premises between the dates specified in the order of reference made by this
259 court in this behalf on the 4th day of November, A. D. 1871, and for all lawful charges and expenses incurred by him in the management and care of said property, and also after crediting him, the said Charles Bobb, as tenant by the curtesy, with (¼) one-fourth of the rents, issues, and profits of said trust estate from the 18th day of May, 1853, less such moneys or proportion of moneys laid out and expended for taxes, repairs, improvements, and lawful charges and expenses incurred in the management of said property as were expended by him as such tenant or which were properly chargeable against him as tenant for life of (¼) one-fourth of said estate, and also after crediting him, the said Charles Bobb, as trustee, with all such sums as are found to have been paid or advanced by him, said trustee, to the said John H. Bobb, Charles L. Bobb, and Lucy G. Taylor, on the faith and credit of said trust estate, and also after crediting him, said Charles Bobb, as trustee, with a just and reasonable compensation for his services as such trustee in and about the care and management of said trust estate from and after the 23d day of January, 1845, down to the 8th day of February, 1870, at which last-mentioned date the custody of said trust estate was placed in the hands of said Samuel D. Porter, as receiver, under the orders of this court, the said defendant, Charles Bobb, as trustee of said beneficiaries, respectively, is liable to the plaintiff, John H. Bobb, and to the defendant Charles L. Bobb or his legal representatives, and to the defendant Lucy G. Taylor or her assigns, for certain balances in money appearing by the said account to have been chargeable to him, said Charles Bobb, as such trustee, on account of money received by him from or on account of said estate from time to time; and it further appearing that said balances were used by said trustee from time to time for his
260 own profit by loaning the same at interest at a high rate per annum and upwards and by otherwise employing the same for his own individual benefit without accounting for the same nor for any of the profits so *released* by him therefrom; it is therefore declared, adjudged, and decreed that said defendant, Charles Bobb, is accountable to said beneficiaries for all balances so remaining in his hands, together with interest thereon at the rate of six per centum per annum, computed with annual rests, and the court doth order, decree and adjudge that by reason of the premises said defendant, Charles Bobb, is liable to said plaintiff, John H. Bobb, in his own right as such beneficiary for, and that such plaintiff recover of said defendant, Charles Bobb, the sum of ($27,538.83) twenty-seven thousand five hundred and thirty-eight dollars and eighty-three cents, the same to bear interest until paid at the rate of six per centum per annum; and the court doth further

order, adjudge, and decree that said defendant, Charles Bobb, is liable to the representatives of Charles L. Bobb, deceased, for, and that the defendant Martrom D. Lewis, administrator of the estate of said Charles L. Bobb, do recover from said defendant, Charles Bobb, the sum of ($18,382.59) eighteen thousand three hundred and eighty-two dollars and fifty-nine cents, the same to bear interest until paid at the rate of six per centum per annum; and the court doth further order, adjudge, and decree that said defendant, Charles Bobb, is liable to the defendant Lucy G. Taylor or her assignee in respect of her interest as beneficiary under said trust in the sum of ($36,263.83) thirty-six thousand two hundred and sixty-three dollars and eighty-three cents; and it appearing to the court that the plaintiff, John H. Bobb, hath since the institution of this suit, by due assign-
261 ment and conveyance thereof, become the assignee of all and singular the right, interest, claim, and demand of her, the said Lucy G. Taylor, and of the defendant Wm. F. Taylor, if any, of, in, and to the said trust property and all demands arising therefrom or in respect thereof against said defendant, Charles Bobb, it is ordered, adjudged, & decreed that the said John H. Bobb do also recover of said defendant, Charles Bobb, the further sum of ($36,263.83) thirty-six thousand two hundred and sixty-three dollars and eighty-three cents, the same to bear interest at the rate of six per centum per annum until paid; and it is further ordered, adjudged, and decreed that the costs of this suit and all proceedings therein be taxed against the said defendant, Charles Bobb, and that the said plaintiff, John H. Bobb, and the said defendants herein other than said Charles Bobb do recover of him, said Charles Bobb, all costs herein by them respectively laid out and expended, and that execution issue therefor accordingly; and it is further ordered, adjudged, and decreed that in and as part of the costs to be taxed against said defendant, Charles Bobb, in this cause all costs heretofore paid by said Samuel D. Porter as receiver in this behalf under the orders of this court be included, and that said costs last mentioned be taxed against said Charles Bobb in favor of said plaintiff and the defendant Martrom D. Lewis in the following proportions—that is to say, ($\frac{2}{3}$) two-thirds thereof in favor of said plaintiff, John H. Bobb, and ($\frac{1}{3}$) one-third thereof in favor of said defendant, Martrom D. Lewis, as administrator of the estate of Charles Bobb, deceased, and that they respectively have execution therefor; but execution is to issue for only so much of the costs so to be taxed against said Charles Bobb as shall not have been paid and satisfied by
262 such portion of the moneys ordered to be paid into court by the receiver as hereinbefore ordered to be applied in satisfaction thereof; and it is further ordered by the court that the said receiver, Samuel D. Porter, do forthwith make and file a supplementary and final report of his further proceedings as receiver from the 27th day of May, 1878, down to and including the date of entry of this decree, and that he do pay over all sums of money received by him as such receiver to the last-named time, and the court doth now appoint William J. Berkley as temporary receiver in this cause and until the further order of this court, at a compensation for all serv-

ices whatsoever rendered or to be rendered by him of four per cent. of the amount of rents which may be collected by him, and which sum is to be full compensation for his said services; and it is ordered that the said receiver do execute a bond with sureties in the sum of six thousand dollars, to be approved by the court, conditioned for the faithful performance of his duties as such receiver, and that the said receiver do forthwith take possession of said property and collect the rents thereof; and the court doth order that the said Samuel D. Porter do give the said William J. Berkley full information as to the tenants of said property, the amount of rent payable by them and how payable, and amounts of rent, if any, due by them and still payable, and all other necessary information to enable him, the said William J. Berkley, temporary receiver as aforesaid, to properly enter upon the performance of his said duties as aforesaid, and all other questions arising upon the foot of this decree are reserved until the further order of the court; and it is further ordered that execution issue in accordance with this decree.

Counsel for plaintiff offered in evidence record in the case of John Bobb against Charles H. Bobb *et al.*, respondents, being No.
263 611 to the October term of 1884, supreme court of the State of Missouri.

Counsel for defendant objects to the same as being irrelevant and incompetent.

The court sustained the objection to all of the record except the judgment of the supreme court, which is as follows:

Supreme Court of Missouri.

Judgment of Supreme Court in No. 13809.

JOHN H. BOBB, Respondent,
vs.
CHARLES BOBB, JAMES K. TAYLOR and CORA S. TAYLOR, His Wife, and *and* George L. Bobb and William F. Taylor, Lucy G. Taylor, His Wife; John D. Stevenson and Hannah D. Stevenson, His Wife; Irene Bobb, Abraham Siegel, Guardian *ad Litem;* Philip M. Bobb and Charles H. Bobb, Minors, and Martrom D. Lewis, Public Administrator in Charge of the Estate of Charles L. Bobb, Appellants.

Appeal from St. Louis court of appeals.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by the St. Louis court of appeals rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said respondent recover against the appellants his costs and charges herein expended and have thereof execution.

Opinion filed.

264 STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the judgment of said supreme court entered of record at the October term, 1885, and on the 26th day of January, 1886, in the above-entitled cause.

Given under my hand and the seal of said court, at the [SEAL.] city of Jefferson, this 18th day of February, 1886.

H. W. EWING, *Clerk*,
By H. Y. SHERWOOD, *D. C.*

Exception by the Plaintiffs.

Defendants duly and severally except to the admission of said judgment.

Plaintiff Rest-.

Counsel for plaintiff here rested their case on the evidence.

Counsel for defendant then and there made application to the court to dismiss the bill on the ground that the proof is not sufficient to sustain the allegation of the petition.

Which ground was overruled by the court and the defendants severally and duly excepted.

To which ruling of the court defendants' counsel then and there duly excepted.

Defendants' counsel, to maintain the issues on their part, introduced the following evidence:

By Mr. KINEALY: I will offer in evidence Mrs. Bobb's bank book in the Mechanics' bank, identified yesterday by the teller, Warner, for the year 1875, marked Exhibit "A 2."

Counsel for plaintiff objected to the evidence as immaterial, incompetent, and irrelevant.

By the COURT: I don't see upon what theory the account
265 between the bank and Mrs. Bobb can be made evidence between the plaintiff and Mrs. Bobb. I will sustain the objection.

Counsel for defendant then and there duly excepted to the ruling of the court.

By Mr. KINEALY: I will offer in evidence, if the court please, two checks, one of $3,000.00 and the other for $3,000.00, payable to the Exchange bank, one bearing date October 27th, 1875, and the other bearing date November 4th, 1875, both signed by Mrs. Martha E. Bobb, her signature having been identified previous in corroboration of Mrs. Bobb's statement that she paid those notes to the Exchange bank and paid them by checks on the Mechanics' bank.

Counsel for plaintiff objected to the evidence on the ground that there is no connection between the checks and those notes.

By the COURT: I don't think they are evidence at the present time.

Counsel for defendant then and there excepted to the ruling of the court.

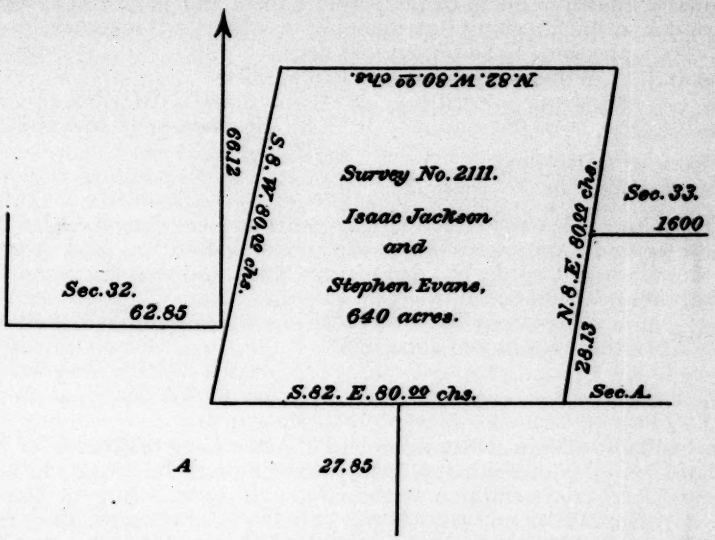
By Mr. KINEALY: We will now ask from the opposite side the same privilege we accorded to them, that where we have not got the deeds that we be permitted hereafter to supply them by the productions of the records or otherwise.

I will first offer in evidence, if the court please, the deed of Timothy M. Bryan, of the city of Philadelphia and State of Pennsylvania, to Charles Bobb and others, bearing date May 18th, 1858, conveying for the consideration of $2,200.00 the property or tract of land known as the "Hazel Run" tract, recorded in Book G, page 523, which was admitted in evidence and is as follows, viz:

Tom M. Bryan to C. Bobb et al.

This deed made and entered into this eighteenth day of May, eighteen hundred and fifty-eight, by and between Timothy M. Bryan, of the city of Philadelphia and State of Pennsylva-
266 nia, party of the first part, and Charles Bobb and Alexander L. Lyle, of the city and county of Saint Louis and State of Missouri, parties of the second part, witnesseth that the said party of the first part, in consideration of two thousand two hundred dollars to him paid by the said parties of the second part, the receipt of which is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part the following-described tract of land, known as the "Hazel Run" tract, confirmed to Isaac Jackson and Stephen Evans January 10th, 1806, and containing six hundred and forty acres (640), situated, lying, and being in St. Francois county, State of Missouri, in township thirty-seven (37) and thirty-eight (38) north of the base line, range five east of the fifth p'l meridian, it being United States survey number two thousand one hundred and eleven (2111), reference being had to said survey and the following plat:

267



Sec. 5, Jacob Masteller.—Butted and bounded as follows: North and east by public lands, south by land confirmed to Jacob Masteller, and west by James Bryan's pre-emption right.

To have and to hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging, unto the parties of the second part and to their heirs and assigns forever; the said Timothy M. Bryan, party of the first part, hereby covenanting that he, his heirs, executors, and administrators, shall and will warrant and defend the title to the premises to the said parties of the second part and to their heirs and assigns forever against the lawful claim of all persons whomsoever claiming or to claim any part thereof.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

T. M. BRYAN. [SEAL.]

Executed in presence of—
LEWIS LAFORQUE.
J. HUTCHINSON RAY.

268 STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Be it remembered and it is hereby certified that on this 25th day of May, A. D. 1858, before the subscriber, John Burns, a commissioner for the State of Missouri, commissioned by the governor thereof to reside in the State of Pennsylvania to administer oaths and take the acknowledgements of deeds or other instruments to be re-

corded in that State, personally appeared T. M. Bryan, he being personally known to me to be the person named and described as the grantor in the foregoing instrument of writing, and acknowledged the same to be his act and deed.

[SEAL.] Witness my hand and seal of office.

JOHN BURNS,
Commissioner of Missouri.

STATE OF MISSOURI, }
County of St. Francois, } *ss:*

I, John Cobb, clerk of the circuit court and *ex officio* recorder in and for said county, certify that the foregoing deed was filed in my office for record on the 5th day of June, 1858, and that the same is truly recorded therein in Book G, on page 523.

[SEAL.] Witness my hand and official seal, hereto affixed, at office this 11th day of June, 1858.

JOHN COBB, *Recorder,*
By W. R. TAYLOR, *D. R.*

I will also offer in evidence the deed of Alton Long to Charles Bobb, dated 19th day of February, 1856, conveying lots 18, 19, 20, 21, 22, and 23 of Ulrici's addition to the city of St. Louis, being in block No. 210 of said city, dated 19th day of February, 1856, re-
269 corded May 16th, 1856, in Book 176, page 2, which was admitted in evidence and is as follows:

Alton Long to Charles Bobb.

This deed made and entered into on this nineteenth day of February, eighteen hundred and fifty-six by and between Alton Long, party of the first part and Charles Bobb, party of the second part, witnesseth, that whereas by deed of trust dated October 5th, 1855 and recorded in the recorder's office of St. Louis county in Book 169, page 89, Nathaniel Chiles Jr. and Margaret his wife conveyed to the said party of the first part the following-described real and personal estate together with other real estate, all situated in the county of St. Louis, in the State of Missouri, to wit:

1st. Lots Nos. 18, 19, 20, 21, 22 and 23 in Richard W. Ulrici's addition to the city of St. Louis, being in block No. 210 of said city, having a front of one hundred and fifty feet on 15th street by a depth of one hundred feet, on which there is a large two-story brick house.

2nd. Lots No-. four, five, and six in block No. eight in St. Ange. addition to the city of St. Louis, as laid out by commissioners in the partition suit of Robert Barth *vs.* Richard Graham *et al.*, a plat of which addition together with the proceedings in the said suit are on file in the recorder's office of said county in Book N: No. 6, page 5, said three lots together front seventy-five feet on Third street by a depth of one hundred and twenty-two and a half feet to an alley fifteen feet wide; bounded north by lands of Frederick Schulenberg

and others, west by Third street, south by lot No. three and east by an alley.

3d. Lots Nos. 1, 2, 5 & 6 in block No. nine in the said St.
270 Ange. addition to the city of St. Louis, as per plat filed as aforesaid.

4th. The following-described lot in block No. 498 in said city, beginning at a point in the south front line of Pine street distant east sixty-seven feet three inches from the northwest corner of said block 498, thence east along the line of Pine street forty feet nine inches, thence south and parallel to Sixteenth street one hundred and nine feet four inches to an alley, thence west with the north line of said alley forty feet nine inches; thence north one hundred and nine feet four inches to the beginning; also one negro man named Andrew, aged 28 years; also one negro woman named Sarah, aged about 25 years, also nine yoke of work oxen, six work mules, four wagons and three pair of timber wheels and also a lot of lumber, walnut lumber containing about one hundred thousand feet; which said deed of trust was made to secure the payment of the promissory notes described in said deed of trust, executed by said Chiles and others and upon which Louis F. Lacy and James B. Ricords and others were endorsers. And whereas the said notes have become due and remain unpaid and judgment- have been rendered on several of them, which also remain unpaid and more than twenty days elapsed after the rendition of said judgments and before the advertisement hereinafter mentioned, was first inserted in the paper, and at the request of said Lewis F. Lacey and James B. Ricords the parties interested and in pursuance of the terms and conditions contained in said deed of trust, the said party of the first part caused an advertisement, stating the time terms
271 and place of sale, and also a description of the said real and personal estate described in said deed of trust to be published twenty-one times prior to the day of sale in the Daily Missouri Republican, a newspaper printed and published in the said city of St. Louis, the first insertion being on the thirtieth day of January 1856, and the last insertion on the nineteenth day of February 1856, as appears by the affidavit of John Knapp one of the printers of said newspaper, which said affidavit, together with a copy of said advertisement is hereto annexed and made a part of this deed and marked "A." And in pursuance of said deed of trust and said advertisement the said part- of the first part, on the nineteenth day of February eighteen hundred and fifty-six, between the hours of ten o'clock a. m. and four o'clock p. m. of said day exposed to sale at public auction or vendue at the northern door of the courthouse in the city of St. Louis for cash, the said real and personal estate for the purposes mentioned in said deed of trust and at said sale the said party of the second part was the highest last and best bidder for the said real and personal estate, and the same were struck off and sold to him at and for the following prices to wit: The first piece of real estate hereinbefore described at five dollars, the second piece as above described being lots four, five, and six in block 8 in St. Ange. addition at seven hundred and fifty dollars,

being two hundred and fifty dollars a lot; lots one and two in block 9 of said St. Ange. addition at four hundred and ninety-eight $\frac{67}{100}$ dollars, and lots five and six in same block at five hundred dollars, and which said four lots embraces the piece thirdly above described; the piece fourthly herein described at five dollars;
272 the said negro man Andrew at five dollars, the said negro woman Sarah at six hundred dollars, the said nine yoke of work oxen at ninety dollars, the said six mules at fifteen dollars; the said four wagons at twenty dollars; the said three pair of timber wheels at fifteen dollars and the said lot of walnut timber at thirteen $\frac{50}{100}$ dollars making in the aggregate the sum of twenty-five hundred and seventeen $\frac{17}{100}$ dollars:

Now therefore in consideration of the premises and the said sum of 2,517.17 dollars cash in hand paid, the receipt of which is hereby acknowledged, the said party of the first part, does by these presents, bargain, sell, alien, transfer, set over, deliver and convey unto the said party of the second part, all the right, title, interest and estate in and to the real and personal estate hereinbefore described and purchased as aforesaid which the said party of the first part acquired in and by virtue of said deed of trust and can sell and convey in and by virtue of said deed of trust, advertisement and sale, to have and to hold the said real and personal estate with the appurtenances unto the said party of the second part his heirs and assigns forever.

The figures 3 and 4 on 23d line on first page erased before execution and also the word "days" between 6 & 7th lines from top on second page, interlined.

In witness whereof, the said party of the first part has hereunto set his hand and seal on the day and year first herein written.

ALTON LONG, *Trustee.* [SEAL.]

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

Be it remembered that Alton Long, who is personally known to me, a notary public, duly appointed and commissioned
273 in and for said county, to be the same person whose name is subscribed to the foregoing deed as a party thereto, this day appeared before me, at the county of St. Louis aforesaid, and acknowledged that he executed the said deed voluntarily for uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of my office this eighteenth day of March, A. D. eighteen hundred and fifty-six.

R. S. VORHIS,
Notary Public.

Trustee's Sale.

Whereas by deed of trust dated October 5th, 1855, and recorded in the recorder's office of St. Louis county, in Book 169, page 89, Nathaniel Chiles, Jr., and Margaret, his wife, conveyed the real and personal estate hereinafter described to the undersigned to secure the payment of the promissory notes described in said deed of trust,

which said real and personal estate is described as follows, to wit: Lots Nos. 18, 19, 20, 21, 22, and 23, in Richard W. Ulrice's addition to the city of St. Louis, in the county of St. Louis, being in block No. 210 of said city, having a front of one hundred and fifty feet (150) on Fifteenth street, on which they front, by a depth of one hundred feet, on which there is a large two-story brick house, now occupied by said N. Chiles, Jr.; also lots Nos. 4, 5, and 6, in block No. (8) eight, in St. Ange addition to the city of St. Louis and State of Missouri, as laid out by commissioners in the partition case of Robert Barth *vs.* Richard Graham *et al.*, a plat of which addi-
274 tion together with the pr-ceedings in the same case are on file in the recorder's office of said county in Book N, No. 6, page 5. Said three lots together front seventy-five feet on Third street by a depth of one hundred and twenty-two and a half feet to an alley fifteen feet wide, bounded north by land of Frederick Schulenburg and others, west by Third street, south by lot No. three, and east by an alley; also lots Nos. 1, 2, 3, 4, 5, and 6, in block number nine, in the said St. Ange addition to the city of St. Louis, the said lots having together a front of one hundred and sixty-two feet four inches on Fourth street by a depth of one hundred and twenty-two and a half feet to an alley fifteen feet wide, and bounded south by Harney street and west by Fourth street, east by an alley, and north by ——, and on said lot there is a two-story frame house.

Also the following-described lots of ground in *book* No. 498 of said city: Beginning at a point in the south front line of Pine street distant east sixty-seven feet three inches from the northwest corner of said block 498, thence east along the line of Pine street forty feet nine inches; thence south and parallel to Sixteenth street one hundred and nine feet four inches to an alley; thence west with north line of said all-y forty feet nine inches; thence north one hundred and nine feet four inches to the beginning; bounded north by Pine street, east by James H. Lucas, south by an alley, and west by a lot now or formerly of Wm. H. Carroll. Also the steam saw-mill, now in course of erection, on a lot owned by Basil W. Alexander, together with the engine, boilers, and all other machinery and fixtures
275 belonging to said mill. The said mill is located on the northeast corner of block 728, in said city. For a more full description of said ground reference is had to the lease from said Alexander to said Chiles dated the 2nd day of July, 1855. Also one negro man named Andrew, aged twenty-eight years; also one negro woman named Sarah, aged about twenty-five years; also nine yoke of work oxen, six work mules, four wagons, and three pair- of timber wheels, all in use about the mill above described; also a lot of walnut lumber containing about one hundred thousand feet, more or less. And whereas the said notes have become due and remain unpaid, and judgments have been rendered on several of them which remain now unpaid, and more than twenty days have elapsed since the rendition of said judgments: Now, therefore, in pursuance of the terms of said deed of trust and at the request of the parties interested, I will, on the nineteenth day of February, 1856, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, at public

auction or vendue, at the northern door of the court-house, in the city of St. Louis, — for cash the said real and personal estate for the purposes mentioned in said deed of trust.

ALTON LONG, *Trustee.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before me, the undersigned, a justice of the peace within and for the county of St. Louis, John Knapp,
276 who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "Missouri Republican," printed in this State, the newspaper of which he is printer for twenty-one times, the first insertion being on the thirtieth day of January and the last insertion on the nineteenth day of February, 1856, as follows:

Jan'y 30th, No. 25.
" 31, " 26.
Feb'y 1, " 27.
" 2, " 28.
" 3, " 28.
" 4, " 29.
" 5, " 30.
" 6, " 31.
" 7, " 32.
" 8, " 33.
" 9, " 34.
Feb'y 10th, No. 34.
" 11th, " 35.
" 12, " 36.
" 13, " 37.
" 14, " 38.
" 15, " 39 "A."
" 16, " 40.
" 17, " 40.
" 18, " 41.
" 19, " 42.

JOHN KNAPP.

Sworn to and subscribed before me on this nineteenth day of February, 1856.

LOUIS DU BREUIL,
Justice of the Peace.

Printer's fee, $25.00; affidavit 25c. = $25.25; paid by Wm. C. Jamison.

GEORGE KNAPP & CO.

Filed and recorded 16th May, 1856.

C. KEEMLE, *Recorder.*

Also deed bearing date 1st of June, 1868, Catharine M. Snow to Charles Bobb, consideration, $8,000.00; recorded in Book 388, page 44, in Adam L. Mills' addition.

Counsel for plaintiff objected to the evidence on the ground
277 that this was an accession of property subsequent to the time at which he conveyed the Hayden property to his wife.

The *deed* of this is 1868, and the Allen Long deed was dated in 1861.

By the COURT: In case the action turns on a question of Mr. Bobb's financial condition at the time of the conveyance of the property to Mrs. Bobb it may not be incompetent testimony. It may be found to be relevant to the issues, and, I think, at present, it may be admitted.

It was therefore admitted and is as follows, viz:

Catharine M. Snow to Chas. Bobb.

This deed made and entered into this the first day of June, eighteen hundred and sixty-eight by and between Catharine M. Snow (widow of Robert B. Snow deceased) of the city and county of St. Louis, State of Missouri, party of the first part, and Charles Bobb, of the county of St. Louis, State of Missouri, party of the second part, witnesseth: That *that* the said party of the first part, in consideration of eight thousand dollars, to her paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents, remise, release and forever quitclaim unto the said party of the second part, all that certain lot of ground with the improvements thereon, situate in Adam L. Mills' addition to the city of St. Louis and designated as lots number twenty (20) in block number one (1) on the plat of said addition filed in
278 the office of the recorder of St. Louis county, said lot containing on Morgan street thirty-five (35) feet in width and in the rear thirty-two feet eight and one-third inches (328⅓″) on a twenty-foot alley, the same being more or less agreeable to the metes and bounds of said lot, and is bounded north by a twenty-foot alley, south by Morgan street, west by lot number nineteen and east by lot number twenty-one: Being the same property acquired by the party of the first part of Benjamin G. Arnold and wife by deed dated July 15th 1865, and recorded in Book 307, page 239, St. Louis County recorder's office

To have and to hold the same, together with all the rights immunities, privileges and appurtenances to the same belonging unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part, has hereunto set her hand and seal the day and year first above written.

CATHARINE M. SNOW. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this fifth day of June, A. D. eighteen hundred and sixty-eight, before me, the undersigned, a notary public within and for the county and State aforesaid, came Catharine M. Snow, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and she acknowledged the same to be her act
279 and deed for the purposes therein mentioned.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal this day and year last above written.

R. W. BAILEY,
Notary Public, St. Louis County.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder in and for said county and State, do hereby certify that the foregoing instrument of writing was, on the 3d day of September, 1869, filed for record in my office and is duly recorded in Book No. 388, page 442.

[SEAL.] Given under my hand and official seal on the day and year last aforesaid.

JULIUS CONRAD, *Recorder.*

By Mr. KINEALY: I will also offer in evidence, if the court please, deed from Socrates Neuman and Charles H. Bobb and others, bearing date 13th day of April, 1857, recorded in Book 185, page 261—consideration, $40,000.00—which is admitted and is as follows:

Soc. Neuman and Wife to Chas. Bobb & al.

This deed made and entered into this eighth day of April in the year eighteen hundred and fifty-seven, by and between Socrates Neuman, and Lina N. his wife, of the county of St. Louis and State of Missouri parties of the first part and George B. Field and Charles Bobb of the same place, parties of the second part, witnesseth, that the said parties of the first part for and in consideration of thirty-five thousand dollars, to them paid by the said parties of the
280 second part the receipt of which is hereby acknowledged, do by these presents, grant, bargain and sell convey and confirm unto the said parties of the second part, the following-described real estate to wit; a certain lot piece or parcel of ground lying and being situated in the city of St. Louis county of St. Louis and State of Missouri and in block fifty-seven (57) of said city, beginning at a point in the east line of Third street where the same intersects the south line of Elm street, thence southwardly with the east line of Third street one hundred and six feet, thence eastwardly and parallel to the south line of Elm street one hundred and eight feet and eight inches more or less, thence northwardly and parallel with the east line of Third street one hundred and six feet to a point in

the south line of Elm street, thence westwardly and with the south line of Elm street one hundred and eight feet and eight inches, more or less, to the place of beginning; bounded on the north by Elm street, on the west, by Third street, on the south by line one hundred and six feet south of and parallel to the south line of Elm street or the north line of lot of Lina Neuman, and on the east by lot formerly belonging to Mrs. Peter Primm and her children and now supposed to be the property of Rufus J. Lackland.

To have and to hold the same together with all the rights immunities, privileges and appurtenances to the same belonging unto the said parties of the second part and to their heirs and assigns forever; the said Socrates Neuman hereby covenanting that
281 they and their heirs, executors, and administrators shall and will warrant and defend the title to the premises to the said parties of the second part and to their heirs and assigns forever, against the lawful claims of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SO. NEUMAN. [SEAL.]
LINA N. NEUMAN. [SEAL.]

The words "or the north line of the lot of Lina Newman" were interlined between the 5th and 6th lines of first page from bottom before the execution and delivery of these presents.

C. W. HICKS.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this the eleventh day of April, A. D. eighteen hundred and fifty-seven, before me, the undersigned, clerk of the St. Louis court of common pleas within and for the county aforesaid, came Socrates Newman and Lina N., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and personally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Lina N., wife of the said Socrates Newman, being by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on examination separate and apart from her said husband, that
282 she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last above written, at office, in the city of St. Louis.

CHAS. W. HICKS,
Clerk C. C. P.

Filed and recorded April 13th, 1857.

C. KEEMLE, *Recorder.*

Also deed of Charles Bobb and R. J. Lockwood, dated September 1st, 1865, recorded in Book 300, page 414.

Objected to as incompetent and immaterial. Objection sustained. Counsel for defendant then and there duly excepted to the ruling of the court.

This deed is as follows:

Deed of C. Bobb and R. J. Lockwood.

This deed made and entered into this first day of September eighteen hundred and sixty-five by and between Charles Bobb and Martha E. his wife of the city and county of St. Louis and State of Missouri, parties of the first part and Richard J. Lockwood of the same place, party of the second part, witnesseth: That the said parties of the first part in consideration of fourteen thousand dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant bargain and sell; convey and confirm unto the said party of the second part, the following-described lot or parcel of ground situate in block number sixty
283 (60) of the city of St. Louis, containing a front on the south line of Ches-nut street by thirty-two feet one inch (32 1′) by one hundred and ten (110) feet, more or less, depth to a private alley, bounded and described as follows: Beginning at a point in said south line of Ches-nut street one hundred and ten feet French measure westwardly from the northeast corner of said block; thence running southwardly parallel to Second street one hundred and ten feet (110) more or less to a private alley separating this lot from one formerly owned by D. D. Page; thence westwardly with said private alley, thirty-two feet and one inch (32 1′) to a public alley running north and south through said block No. 60 and thence northwardly with the east line of said public alley, one hundred and ten (110) feet, more or less to the south line of Ches-nut street; and thence eastwardly with said line of Ches-nut street, thirty-two feet and one inch (32 1′) to the point of beginning; and being the same premises acquired by said first parties of John Lady, by deed dated April the twenty-fifth A. D. 1863, and recorded in the recorder's office of St. Louis county in Book No. 274 page 163.

To have and to hold the same together with all the rights, immunities, privileges and appurtenances to the same belonging to the said party of the second part, and to his heirs and assigns, forever; the said parties hereby covenanting that they, their
284 heirs, executors and administrators shall and will warrant and defend the title to the premises to the said party of the second part and to his heirs and assigns forever against the lawful claims of all persons.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

CHARLES BOBB. [SEAL.]
MARTHA E. BOBB. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 5th day of September, A. D. eighteen hundred and sixty-five, before me, the undersigned, a notary public in and for the county aforesaid, came Charles Bobb and Martha E. Bobb, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Martha E. Bobb, wife of the said Charles Bobb, having first been by me made acquainted with the contents of the foregoing conveyance, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished all her interest, whether of dower or otherwise, in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

JOEL G. HARPER,
Notary Public.

Filed and recorded Sept. 9, 1865.

A. C. BERNARDY, *Recorder.*

285 By Mr. KINEALY: I will also offer the deed of Charles Bobb to E. Turton, in Book 300, page 144, dated May 2d, 1865.

Counsel for plaintiff objected to the evidence as incompetent; which objection was sustained by the court; to which ruling of the court defendant's counsel then and there duly excepted.

Said deed is as follows:

Deed of Chas. Bobb to E. Turton.

This deed made and entered into this second day of May eighteen hundred and sixty-five by and between Charles Bobb and Martha E. Bobb his wife, of the county of St. Louis and State of Missouri parties of the first part, and Eugene Turton, William Turton and Madeline Turton of the same place, parties of the second part witnesseth: That the said parties of the first part in consideration of two thousand dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged do by these presents, remise, release and forever, quitclaim unto the said parties of the second part, the following-described real estate in the city and county of St. Louis, State of Missouri, described as follows, to wit: Commencing at a point on the northwest corner of city block No. 531, thence east along the south line of Morgan street, sixteen feet, thence south sixty feet, thence west sixteen feet, thence north along the east line of Twelfth street, sixty feet to the point of beginning; bounded on the east by property of Mary Ann Turton, Eugene Turton, William Turton and Madeline Turton, on the south by
286 B. Hill's property, west by Twelfth street and north by Morgan street.

To have and to hold the same together with the improvements thereon, together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said parties of the second part and to their heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

CHARLES BOBB. [SEAL.]
MARTHA E. BOBB. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this second day of May, A. D. eighteen hundred and sixty-five, before me, the undersigned, a notary public in and for St. Louis county, came Charles Bobb and Martha E. Bobb, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as the parties thereto, and they severall- acknowledged the same to be their act and deed for the purposes therein mentioned; and she, the said Martha E. Bobb, wife of the said Charles Bobb, after having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely, willingly, and without compulsion or undue influence of her said husband.

[SEAL.] In testimony whereof I have hereunto set my hand and official seal the day and year first above written.

287 SAM. D. PORTER,
Notary Public, St. Louis Co., Mo.

Filed and recorded May 6th, 1865.
A. C. BENOURDY, *Recorder.*

By Mr. KINEALY: I will also offer, if the court please, deed of John H. Bobb, plaintiff in this case, to Charles Bobb, dated June 2nd, 1868, recorded in Book 368, page 178, by which he conveys and quitclaims certain property.

Counsel for plaintiff objected to the proof as incompetent; which objection was overruled by the court and the deed was admitted. Said deed was read, and is as follows:

Deed of Jno. H. Bobb, Tr. Chas. Bobb.

This deed, made and entered into this second day of June, eighteen hundred and sixty-eight, by and between John H. Bobb, of the city and county of St. Louis, in the State of Missouri, party of the first part and Charles Bobb, of the same county and State aforesaid party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, release and for-

ever quitclaim unto the said party of the second part, the following real estate situate in the county of St. Louis in the State of Missouri and described as follows, to wit. First, a piece or parcel of land lying and being in White Place, an addition to said city of St. Louis, a plat of which is of record in the office of — St.
288 Louis county, and being block number 12, twelve according to said plat containing sixteen lots and bounded northwardly by Margaretha avenue, on which it fronts four hundred and thirty-two feet, east by Sophia avenue on which it fronts two hundred and fifty-six feet and eight inches, south by Julia avenue and west by Louise avenue, being the same property acquired by John H. Bobb of Alexander J. P. Garesche by deed dated March 30th, 1865.

Second: A lot of ground situate in said city of St. Louis, beginning at a point on the east side of Fourteenth street, thirty-five feet north of Papin street, thence along the line of Fourteenth street twenty-five feet, thence eastwardly, parallel with Papin street one hundred and ten feet, five inches more or less, to an alley, thence southwardly along said alley twenty-five feet and thence westwardly parallel with Papin street, one hundred and eleven feet to the place of beginning being part — the same property acquired by John H. Bobb of William H. Eagleson and wife by deed dated 31st December, 1861.

Third: A lot of ground situate in said city of St. Louis marked on plat B, as lot number 3 according to the report of commissioners in the suit of James Morris against William Morris, and others in the St. Louis land court, and being subdivision of lot number 5 in block number 14, in St. Louis commons, having a front on the north line of Park avenue of 135 feet by a depth on the western line of 208 feet 7 inches and a width on the north side of 133 feet 11½ inches and a depth on its eastern line of one
289 hundred and ninety-five feet nine inches and bounded south by Park avenue, west by land of Francis Biehler, north by Toney's addition, and east by lot number 2, assigned to William Morris, being the same lot assigned and alloted to James Morris in partition, among the heirs of John E. Morris, deceased, in the St. Louis land court case No. 129, of the returns to the March term, 1861, of said court.

Fourth: A lot of ground situated in said city of St. Louis and in block number 444, of said city and being the east twenty feet of lot number 49, in block number one of Lanes and Renick's addition to said city, a plat of which is of record, in the recorder's office for St. Louis county, and which said lot is bounded east by lot number 50, north by Poplar street, west by the western five feet of said lot, number 49, and south by an alley fifteen feet wide, being the same property acquired by John H. Bobb of John Q. A. Fritchey by deed bearing date 29th December 1865, the said party of the second part as is evidenced by his signature hereto agrees with the said party of the first part to assume all the encumbrances on any of the above-described property if any there be.

To have and to hold the above-granted premises together with all the rights, immunities, privileges and appurtenances to the same

belonging unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said parties of the first and second part-
have hereunto set their hands and seals the day and year
290 first above written.

JOHN H. BOBB. [SEAL.]

STATE OF MISSOURI, }
County of St. Louis. }

Be it remembered that on this fifth day of June, eighteen hundred and sixty-eight, before me, the undersigned, in and for said county and State, duly commissioned and qualified, came John H. Bobb, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I have here set my hand and af-
[SEAL.] fixed my official seal, at office, in the city of St. Louis, the day and year last aforesaid.

GEORGE W. FICHTENKAM,
Notary Public, St. Louis County, Missouri.

Filed and recorded July 1st, 1868.

JULIUS CONRAD, *Recorder.*

At this point the court took a recess until 2 o'clock p. m.
At 2 o'clock p. m. the case progressed as follows:

Testimony of Martha E. Bobb.

Mrs. MARTHA E. BOBB, being duly sworn on behalf of the defendant, testified as follows:

Direct examination by MICHAEL KINEALY, Esqr.:

291 Q. Mrs. Bobb, are you the defendant in this case?
A. Yes, sir.

Q. Are you the lady that made this deposition that was read in evidence here?

A. Yes, sir.

Q. Do you know Mrs. Lucy G. Taylor?

A. Yes, sir.

Q. Do you remember where she was at the time you were married?

A. She was at home.

Q. What is the feeling that she evinced towards you after your marriage, and from that on to the present time what was the nature of that, friendly or otherwise?

A. At times she was rather unfriendly, and at other times they were agreeable.

Q. How long did she continue in an agreeable state of mind towards you?

A. After she came more to her reason. She was a child 12 years old, and it lasted but a short time.

Q. At the present time in what way has she evinced her feelings towards you?

A. Since she joined her brother in the case she has been unfriendly. In the beginning of the suit she was entirely against him and was with us, and we were very friendly and happy together.

Q. Mrs. Bobb, Mrs. Taylor was on the stand today and yesterday, and I suppose you heard her testify. She testified to a statement that she alleged you made some time after you were married and while she was on unfriendly terms with you, the fact that you were a poor woman, and that your first husband was a poor man and left you very little. You heard that statement, did you?

A. Yes, sir.

Q. Was any such statement ever made by you to Mrs. Taylor or anybody else?

A. Never a word.

Q. Mrs. Taylor also testified that at Oakland you stated to
292 her that you had nothing, or some words to that effect—I don't remember the exact words—except what you got from Mrs. Bobb. Did you ever make such a statement?

A. Never.

Q. Did you hear her make that statement here?

A. Yes, sir.

Q. Did you ever make such a state as she alleged?

A. I never did.

Q. Will you state to the court what the relations between you and Mrs. Taylor were at the time she alleges you made that statement and as to whether it was likely you would make such a statement to her?

A. When she came to us—her brother sent her to us—it was late in the evening. I was very much surprised to see her, as we had not been on friendly terms for a number of years. She came and brought her children. One was very sick with a fever. A young gentleman by the name of McBride, who took care of her from St. Louis to the house, was with her. It was raining and it was very disagreeable weather. She had one of our rooms. She had two little girls and one little boy with her. There were five of them that stood there on the front porch. Her father and I met her and received her in the house and took care of her. We sent for Dr. Pittman, at Kirkwood, to attend to the child. I put her in my best spare bed-room, and there she stayed until her child got well.

Q. What was the condition of her feelings towards you as she evinced them to you? Were they of such a friendly character that you made a confidante of her?

A. At the time she seemed perfectly friendly.

293 Q. She said after she was there awhile she was in a state of enmity.

A. She would get out of humor once in a while, especially when I told her I felt like making a change in the family.

Q. That is not exactly what I wanted to get at. Were you on such relations with her that you would confide your secrets to her?
A. I had no secrets and I never confided any to her.
Q. Did you know at the time how she stood towards your family?
A. I know she was a bitter enemy of their-.
Q. You never made that statement that she says you did?
A. No, sir; I never did.
Q. Or anything like it?
A. Nothing at all of the kind.
Q. Mrs. Bobb have you been attending to the evidence given herin this case?
A. Yes, sir; I have heard it.
Q. You have heard the name of Mr. Frank R. McGinnis mentioned?
A. Yes, sir.
Q. Who is Mr. Frank R. McGinnis?
A. He is my son-in-law.
Q. Your only son-in-law, I believe?
A. Yes, sir.
Q. Do you know anything, Mrs. Bobb, concerning the source from which the money was obtained that paid the expenses of the deed-of-trust sale on this particular property?
A. I took that to Mr. McGinnis myself. I gave him $100.00.
Q. Which Mr. McGinnis?
A. Frank R. McGinnis, at my daughter's house. I met him there and gave him the money.
Q. You gave him the money yourself?
A. Yes, sir.
Q. For what purpose?
294 A. To bear the expense of the sale at the court-house.
Q. (Handing paper to witness.) Mrs. Bobb, please look at this check; those are the old checks. Is that your signature to these checks?
A. Yes, sir.
Q. For what purpose did you draw these checks, Mrs. Bobb—what use did you make of them?

Objected to. Objection overruled.

A. It was to buy the notes, to be used in buying the notes in the deed of trust on the Bird property.
Q. What notes?
A. The notes given that this bank held. I don't remember the name of the bank.
Q. The Bird note?
A. Yes, sir; the Bird note and deed of trust on the place.
Q. Who held these notes at the time you paid them?
A. The Exchange bank.
Q. And you gave those checks?
A. Yes, sir.
Q. You gave those checks to the Mechanics' bank?
A. Yes, sir.

By Mr. KINEALY: I will offer these checks in evidence, if the court please, and will follow it up by showing that she had the money.

Counsel for the plaintiff objected to the proof as incompetent. Objection overruled.

Checks.

No. 1. ST. LOUIS, Mo., *Oct.* 22*d*, 1875.

Mechanics' bank pay to Exchange bank — order three thousand $\frac{00}{100}$ dollars in current funds.

$3,000.00. MARTHA E. BOBB.

No. 2. ST. LOUIS, Mo., *Nov.* 4*th*, 1875.

295 Mechanics' bank pay to Exchange bank or order three thousand $\frac{00}{100}$ dollars in current funds.

$3,000.00. MARTHA E. BOBB.

Q. Who held those notes at the time?
A. The bank.
Q. Which bank?
A. The Exchange bank.
Q. At the time you drew those checks had you any funds in the Mechanics' bank?
A. Yes, sir.
Q. To whom did those funds belong?
A. To me.
Q. I will ask you to look at that book and state what book it is.
A. It is my bank book.
Q. What is that book, Mrs. Bobb?
A. It is my bank account. It speaks for itself.
Q. The account you had in the Mechanics' bank for the year 1875?
A. Yes, sir.

By Mr. KINEALY:

Q. I now offer this book in evidence, if the court please, with the various entries and the dates.

EXHIBIT A 2.

M. E. Bobb Bank Ac.

The Mechanics' bank in account with Mrs. Martha E. Bobb.

Dr.				Cr.			
1875.				1875.			
Aug. 3.	To balance		4,446 17			125	
19.	Dep.		250			2	
Sept. 18.	"		350			59	75
" 20.	"		45			15	62
		4,000					
Oct. 18.	Dis.	30 20	3,969 80			68	50
" 19.	Dep.		3,000			50	
" 21.	"		1,300			6	
" 22.	"		1,720			3,6	
" 27.	"		300			3	
Nov. 4.	"		5,000			50	
Sep. 30.	"		100			4	
Oct. 26.	Coll.		250			2	
296							
Nov. 20.	D.		2,957 33			3	
"			600		Bal.	319	43
			24,288 30			24,-88	30
Nov. 29.	To balance		319 43		C'ks.	175	50
						84	20
Dec. 20.	Dep.		95			39	25
						1,450	
21.	"		76			270	
22.	"		1,100			1,239	25
24.	"		100		Balance.	207	23
" 29.	"		1,700				
" 21.	Coll.		75				
			3,465 43			3,465	43
1876.							
Jan'y 1.	To bal.		207 23		C'ks.	207	
						1	
" 26.	Dep.		140			135	
						75	
" 29.	"		200			1	
						3	
Feb'y 3.			55			1,870	87
" "	P. B. Powers		50 60			50	25
" 4.	"		6,000			3	
						503	
" "	"		2,000			80	
M'ch 10.	"		150			6	
18.	"		100		Balance.	191	71
18.	"		250				
Ap'l 10.	"		185				
11.			325				
26.	Marshall		250				
			9,912 83			9,912	83

Exhibit A 2—Continued.

Dr.					Cr.			
Ap'l 28.	To balance			191 71		C'ks		200
May 2.	Dep.			40				56 24
" "	"			30				1,3
" 6.	"			83 33				4
" 10.	"			79 20				8
		1,300						
19.		9 55		1,290 45				3,233 99
297								
" 20.	Dep.			500				270
" 26.	"			300				3
" 27.	"			1,500				
		1,600		1,587 90				
July 3.		12 10	dep.	75		Balance		118 58
" 6.				209				
" 21.				66				
June 2.				115				
" 7.	Dis.			496 22				
" 22.	Geo. Henderson.			75				
July 10.				40				
				6,678 81				6,678 81
July 21.	To balance			118 58		C'ks		4
" 28.	Dep.			150				270
" "	"			23 40				300
		4,000						
	Dis.	30 22		3,969 78				40
29.	Dep.			15				58 45
		50						
Sept. 20.		1		49		Balance		32 31
Aug. 2.	S. E. Rippy			300				
Sept. 9.				75				
				4,700 76				4,700 76
Sept. 25.	To balance			32 31				1,3
		1,300						
" 30.	Dis.	9 83		1,290 17				25 91
Oct 3.	Coll. P. B. Powers.			51 46				1
" 10.				75				5
Nov. 2.	Ex.			495 27				18 30
1877.								
Feb'y 27.	Rippy			300 00				3
				2,244 21				2,244 21
1877.								
Ap'l 10.	Coll. S. A. Rippy.			3,000	April 13.	By check		2,500
Aug. 2.	Dep.			400	" 23.			400
Oct. 9.				150	May 4.			100
					Aug. 10.			400
					Oct. 10.			150
				3,550				3,550

298 Q. Mrs. Bobb, I will ask you if any of this money belonged to your husband?
A. No, sir.
Q. To whom did it belong?
A. It belonged to me.
Q. Was any of it ever obtained from your husband?
A. No, sir.

Cross-ex'n of Martha E. Bobb.

Cross-examination by THOMAS J. ROWE, Esq.:

Q. When did you first begin to keep a bank account?
A. Not until I began to invest money. I had no property or rents or loans or things of that kind.
Q. When did you begin to invest money in loans?
A. I could not tell you the year exactly now.
Q. Have you any means of telling?
A. I had invested loans on property. I had loans accumulated.
Q. Is this the first bank account you ever opened in your own name?
A. I could not tell you whether it is or not.
Q. What is your best recollection about it?
A. I could not give you an answer as to that.
Q. Where did you get all the money that you deposited in the bank?
A. Some of it was borrowed money.
Q. Borrowed on what?
A. On security of real estate.
Q. Who owned the real estate?
A. I did.
Q. Where did you get the real estate?
A. I bought it.
Q. Where did you get the means with which to buy the real estate?
A. Well, I suppose, to go back to the first claim, when I became possessed of about thirteen or fourteen thousand dollars, I invested that money in real estate.
Q. Has not everything that you have had since September, 1857, been derived from the property known as the Hayden place, on king's highway?
A. Most of it.
Q. Has not everything?
A. Well, I suppose it has all.
Q. You say you purchased the Bird note from the Exchange bank?
A. Yes, sir.
Q. What was the amount of that note?
A. $8,000.00.
Q. What did you give for it?
299 A. I gave $2,000.00 and gave two notes of $3,000.00 each—two checks.

Q. When was it you purchased that note?

A. I cannot tell you the day just now. I had it in my memory a few minutes ago.

Q. Have you any means or memorandum by which you can get it into your memory again?

A. Yes; I believe I have a memorandum in my pocket (producing memorandum). The checks were given in October and November, 1875.

Q. I am asking you about when did you purchase the Bird note?

A. It was about that time—about 1875.

Q. What day was it?

A. Now, Mr. Rowe, I don't think I could tell you the date; I could tell you the month.

Q. Well, what month was it?

A. I believe it was in November, 1875.

Q. What officer of the bank did you have your dealing with at the time of the purchase?

A. The day Mr. Bird and I went there, the gentleman I had the dealing with, I recollect since, was Mr. Bozier; I did have it in my deposition Mr. De Loge.

Q. When you went there to purchase this Bird note, did you give the officer of the Exchange bank $2,000.00 in cash?

A. Yes, sir.

Q. And then gave him these two checks on the Mechanics' bank, one for $3,000.00 and the other for $3,000.00?

A. I cannot say whether I gave it to him that day or not.

Q. Did you give the checks the same day you mentioned the $2,000.00 in cash?

A. I don't recollect that.

Q. Did you give both checks the same day?

A. I cannot say that, neither; no; one check was given in November and the other in October, one month apart.

300 Q. Did you give the $2,000.00 on the day you gave the check?

A. I gave the $2,000.00 in cash to Mr. Bozier on that day, but I don't recollect about the check—whether I gave him the check that day or not.

Q. Did he deliver the note to you?

A. I don't know how that came—whether he gave it to me that day or not. I think I got that note on that date, for I did not pay the full amount, when I come to think about it.

Q. Did you get the note or did you not get it?

A. I got the note; I got the note.

Q. When you paid him the $2,000.00 did you get the note?

A. Yes, sir.

Q. Why did you not give a check for that $2,000.00?

A. I had the cash on hand; I had it in my possession; I had it at home.

Q. Did you have a bank account in September, 1857?

A. No, sir; I don't think I did.

Q. Do you recollect buying No. 2926 Pine street from Mr. Charles Bobb for $8,000.00?

A. Yes, sir.

Q. Did you give him a check for that?

Objected to by defendants severally as irrelevant and incompetent.

Objection overruled and defendants severally excepted.

A. No, sir.

Q. Do you recollect that was in October, 1875?

A. No, sir; I don't recollect that.

Q. You had a bank account then?

A. Yes, sir.

Q. You did not give a check for $8,000.00?

Objected to as irrelevant and incompetent.

By the COURT: It is intended to show the course of the
301 dealing between the parties, and any inquiry of this kind I think is legitimate.

Defendants severally and duly excepted.

A. No, sir.

Q. After 1857 Mr. Charles Bobb continued to transact all your business for you, did he not?

A. He had some money of mine that he had invested and had charge of.

Q. Did you attend to any business yourself from 1857 to 1870?

A. I did not that. After the sale of the King's Highway property I did.

Q. When was that sold?

A. I think that was in 1869 that we sold that. Then I had means and business to attend to myself.

Q. Did you negotiate any loans or purchase any real estate yourself or deal in any real estate yourself?

A. No, sir; my husband did that for me entirely.

Q. All the investments you made, all the speculations in real estate that you had, were conducted through Mr. Charles Bobb?

A. He had entire charge; he was my husband and had entire charge of everything I had.

Q. And everything that you had at that time in this suit was produced from this Hayden property on king's highway by speculations and investments of Mr. Bobb?

A. Yes, sir.

By Mr. KINEALY: Was all the means you had at that time put into the purcase of the Hayden property? Did you have nothing over? Did you have any cash remaining?

A. Yes, sir.

A. Yes, sir.

Q. Do you know about how much?

A. I don't know exactly how much.

Q. What did you do with that, Mrs. Bobb?

A. Well, I don't know; Mr. Bobb had it all.

Q. Mrs. Bobb, you have testified that Mr. Bobb attended
302 to all your business after that. I would like to recall to your mind one transaction—this open property. Was it Mr. Bobb that bought that?

A. No, sir; I bought that myself.

Q. Was Mr. Bobb willing for you to buy the property?

A. No, sir; he was not.

Q. Did not you buy that property in opposition to his will?

A. I did.

Q. When was that done?

A. Well, it has been 15 years ago, I think; last spring, 14 or 15 years ago.

By Mr. ROWE: Well, about 1872 or 1873?

A. You have a better memory of it yourself than I have. I have got a very poor memory for dates.

Mr. KINEALY: Do you recollect how much was paid for that open property, to the best of your recollection?

A. I think it was about five thousand dollars.

Q. For both pieces?

A. No, sir; for one piece.

Q. How much for the whole, do you remember?

A. Do you mean for the three pieces?

Q. Yes.

A. I could not tell you how much it all amounted to.

Q. Did it amount to as much as $10,000.00?

A. I gave very near that.

Q. That was a transaction as early as 1872 which Mr. Bobb did not transact for you?

A. No, sir; he did not.

—. Mrs. Bobb, did you know Mr. Letcher?

A. Yes, sir; he is my brother-in-law.

Q. Did you ever see his signature?

A. Yes, sir.

Q. (Handing paper to witness.) Will you please look at that and see in whose handwriting that name of John Letcher is.

A. That is his handwriting. He was very nervous, and I can detect the nervousness in the signature.

By Mr. KINEALY: I will offer this bond in evidence, if the
303 court please. It is the bond that Mrs. Bobb testified about in her deposition when she authorized McGinniss to convey this property to Mr. Letcher to secure him for going on his bond.

Proof is objected to as incompetent and irrelevant.

By the COURT: In what way is it material?

By Mr. KINEALY: Mrs. Bobb testified to the reason why this property was put in Letcher's name. She said it was because he was going on the bond for her son-in-law, Frank R. McGinnis. She authorized McGinnis to turn over this property to Letcher to secure him for going on the bond.

Afterwards the judgment was paid and she testified it was to be conveyed back again.

Objection overruled.

Bond filed July 25th, 1879.

Objection to this proof was withdrawn by Mr. Holmes on behalf of plaintiff.

44097.

Bond in Case 44097, *Hibernia Savings Bank vs. McGinnis.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Know all men by these presents that we, Francis R. McGinnis, as principal, and Louis A. McGinnis and John Letcher, Joel R. Frazer, as sureties, are held and firmly bound to Hibernia savings bank in the sum of twelve thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated, St. Louis, this seventh day of July, 1879.

The condition of the above obligation is such that whereas Francis R. McGinnis, Charles Bobb, and Marcus A. Wolff have appealed from the judgment rendered against them and in favor of the
304 Hibernia savings bank in the circuit court, city of St. Louis, for the sum of five thousand nine hundred and sixty-seven dollars and sixty-eight cents, together with costs: Now, if the said appellant shall prosecute their appeal with due diligence to a decision in the St. Louis court of appeals and shall perform such judgment as shall be given by the St. Louis court of appeals or such as the St. Louis court of appeals may direct the circuit court, city of St. Louis, to give, and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed and pay all damages and costs which may be awarded against them by the St. Louis court of appeals, then this obligation to be void; otherwise to remain in full force and effect.

FRANCIS R. McGINNIS. [SEAL.]
LOUIS A. McGINNIS. [SEAL.]
JOHN LETCHER. [SEAL.]
JOEL R. FRAZER. [SEAL.]

Approved by the court July 25th, 1879.

Attest: CHAS. F. VOGEL, *Clerk.*

Q. Mrs. Bobb, there was some little sparring by the counsel about the dates at which you purchased the notes. Are you quite certain those checks were given in payment for those Bird notes by the Exchange bank?

A. Yes, sir.

Recross-exn of Martha E. Bobb.

Recross-examination by THOMAS J. ROWE, Esq.:

Q. Don't you know that the consideration for this Oakland property which you acquired from Elizabeth Peebles was $17,000.00, and $10,000.00 of that was furnished by Charles Bobb from the 14th-street property taken in exchange, and a deed of trust passed for $7,000.00?

A. No; they paid the consideration named and raised the price of property out there. She told me she was going to do that.

305 Q. Was not the 14th-street property given in exchange?

A. She took that at a very small consideration, sir, but she put in that amount.

Q. That 14th-street property was in the name of Charles Bobb, your husband?

A. I don't recollect. I could not tell you. I know it was a business transaction with Mr. Eggleston. We tried to live over there a year.

Q. Was the 14th-street property yours at that time?

A. I could not tell you whether it was or not.

Q. How long were you living there or tried to live there?

Objected to. Question waived.

Testimony of M. A. Wolff.

MARCUS A. WOLFF, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by MICHAEL KINEALY, Esq.:

Q. What is your name?

A. Marcus A. Wolff.

Q. Mr. Wolff, what is your business?

A. Real-estate agent.

Q. How long have you been in that business?

A. About 30 years.

Q. Where?

A. In the city of St. Louis.

Q. Do you know Mrs. Martha E. Bobb?

A. I do.

Q. Do you know Mr. Charles Bobb?

A. I do.

Q. Have you had charge of property for Mrs. Martha Bobb?

A. I have had and I have now, I believe.

Q. How long have you had charge of Mrs. Bobb's property?

A. I presume for fifteen years.

Q. Have you had charge of property for Mr. Bobb?

A. I did after 1862.

Q. Did you have any knowledge of what property he had prior to that time?

A. I have not, sir.

306 Q. Did you know a piece of property, Mr. Wolff, that belonged to Mr. Bobb, at the corner of Elm and Third streets that was conveyed to him by Mr. Moon?

A. I had charge of a piece of property for Mr. Bobb on the southeast corner of Third and Elm streets.

Q. Do you know what that was worth in the year 1874?

Objected to as immaterial.

By Mr. KINEALY: I have introduced the deed from Mr. Bobb dated 13th of April, 1857. I asked these gentlemen if they would admit that that property was sold in 1874. Mr. Rowe stated I would have to prove it in the usual way. The deed was admitted and I want to follow it up.

The COURT: In what way is that testimony material?

Mr. KINEALY: Material in the general line of showing what property Mr. Bobb had. Your honor will perceive that if the question should turn upon whether Mr. Bobb had property or not, the testimony would be relevant, and, if not, it would be irrelevant.

The COURT: You offer it in evidence tending to show Mr. Bobb's financial condition during the period that would be embraced by this inquiry?

By Mr. KINEALY: Well, no; not exactly. I offer it for the same purpose that I offered the deed.

The plaintiffs withdraw their objection.

Newman & al. to Chas. Bobb et al.

This deed made and entered into this eighth day of April, in the year eighteen hundred and fifty-seven by and between Socrates Newman and Lina N. his wife, of the county of St. Louis and State of Missouri, parties of the first part and George B. Field and Charles Bobb of the same place parties of the seeond part, witnesseth:

307 That the said parties of the first part, for and in consideration of thirty-five thousand dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, the following-described real estate to wit: A certain lot, piece or parcel of ground lying and being situated in the city of St. Louis, county of St. Louis and State of Missouri and in block fifty-seven (57) of said city, beginning at a point in the east line of Third street where the same intersects the south line of Elm street thence southwardly with the east line of Third street, one hundred and six feet, thence eastwardly and parallel to the south line of Elm street, one hundred and eight feet and eight inches, more or lesss, thence northwardly and parallel with the east line of Third street, one hundred and six feet to a point in the south line of Elm street, thence westwardly and with the south line of Elm street one hundred and eight feet and eight inches, more or less, to the place of beginning; bounded on the

north by Elm street, on the west by Third street, on the south by line one hundred and six feet, south of and parallel to the south line of Elm street or the north line of lot of Lina Newman and on the east by lot formerly belonging to Mrs. Peter Primm and her children and now supposed to be the property of Rufus J. Lackland.

To have and to hold, the same together with all the rights immunities, privileges and appurtenances to the same belonging unto the said parties of the second part and their heirs and assigns forever: the said Socrates Newman hereby covenanting that they and their heirs, executors and administrators shall and will warrant and defend the title to the premises to the said parties of the second
308 part and to their heirs and assigns forever against the lawful claims of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SO. NEWMAN. [SEAL.]
LINA N. NEWMAN. [SEAL.]

The words "or the north line of the lot of Lina Newman" were interlined between the 5th and 6th lines of first page from bottom before the execution and delivery of these presents.

C. W. HICKS.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this the eleventh day of April, A. D. eighteen hundred and fifty-seven, before me, the undersigned clerk of the St. Louis court of common pleas within and for the county aforesaid, came Socrates Newman and Lina N., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Lina N., wife of the said Socrates Newman, being by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court the day and year last above written at office, in the city of St. Louis.

CHAS. W. HICKS,
Clerk, C. C. P.

Filed and recorded April 13th, 1857.

C. KEEMLE, *Recorder.*

309 Mr. Wolff, what was one-half of that property worth in 1874; do you know?

A. I really could not answer that question, sir.

Q. To the best of your knowledge; you have had some skill in values, have you not; have sold a great deal of real estate?

A. Yes, sir; a good deal.

Q. Now, will you state, according to the state of the market in 1874, what that property ought reasonably to sell for—one-half of it?

A. I don't remember the dimensions of the lot. I know the property, but it has been a good many years since.

Q. 108 ft. front x 120 ft. deep, Mr. Wolff, I am informed is the description that the deed will show. The deed is already in evidence here. I have not got the deed. Assuming that those are the dimensions, what would that property be worth at that time?

A. I should think that property would be worth from $35,000.00 to $40,000.00, the whole of it, at that time.

Q. Do you know the piece *the piece* of property owned by Mr. Bobb, Mr. Wolff, on Chestnut street, across from Arnot's stable?

A. It is on the south side of Chestnut street, I believe.

Q. Where the old police court used to be many years ago.

A. I remember that property, sir.

Q. Can you state what that property was worth September, 1865, Mr. Wolff, assuming it was about 40 feet front on Chestnut street?

A. By what depth?

Q. Down to the alley between Chestnut and Market.

A. I don't know what the depth of it is, really. It is half a block, I suppose. I cannot remember. I don't know.

Q. Did you know whether that was ever Mr. Bobb's property?

310 A. I so understood it.

By Mr. KINEALY: Now I will offer you the deed of trust of Chas. Bobb and R. J. Lockwood of this property, dated September 1st, 1865; recorded in Book 300, page 414; consideration, $14,000.00.

Counsel for plaintiff objected to the proof.

By the COURT: Do you offer the deed for the purpose of showing the value of the property?

Mr. KINEALY: I did offer the deed for the purpose of showing that Mr. Bobb sold it at a certain date for the consideration of $14,000.00, and proposed to follow it up by showing that was the value of the property.

The COURT: It does not make any difference whether Mr. Bobb sold it for $14,000.00 on that date or not. You may ask the witness that question—What was it worth?

A. Mr. Wolff, about the 1st of September, 1865, what was that property worth?

A. $400.00 a foot.

Q. Now, Mr. Wolff, I will have to ask you about a few other pieces here. Do you know the White place, Mr. Wolff?

A. I do.

Q. Do you know the 16 lots in the White place—432 to 456—that stood in the name of John Bobb near about that time?

A. I do.

Q. Do you know what they were worth on the 2nd day of June, 1868?

A. I think I bought them for $3,000.00; I bought then myself from Mr. Bobb.

Q. You know where Park Ave. is, Mr. Wolff?

A. I do.

Q. There is a lot there called Morris' lot, 135 feet front by 208 feet deep. Do you know that lot?

A. I don't remember it.

Q. Do you know the property on Park avenue, south of the machine shops on Park Ave.?

A. I know the property, but I have not had occasion to examine it recently.

311 Q. Do you know the value of it in 1868—135 feet front by 208 feet in depth?

A. I will put it at about $35.00 a foot.

Q. I will ask you if you know what the value was of 40 feet by 120 feet in depth on Lafayette Ave. south of these premises we have just been speaking of on June 2d, 1868?

A. I think that property would be worth $40.00 a foot at that time.

Q. 1414 Poplar street, a lot 20 feet front. What was that property worth, Mr. Wolff, on that date?

A. At that time the property was worth $5,000.

Q. Mr. Wolff, did you know the property known as the Rob't Orme house, on Pacific St.?

A. I had heard of it, but I don't remember about it.

Q. Did not you rent a house out there to a man by the name of Harding, a picture man? I am informed that it is the same house that I am inquiring about.

A. I think I did, but don't remember.

Q. Mr. Wolff, will you look at that paper; did you used to see a man by the name of Harding down there?

A. Yes; I remember that now.

Q. Now, Mr. Wolff, will you be kind enough to state what, in your opinion, was the value of that property in 1863?

A. Well, I think it was worth about $2,200.00.

Q. Mr. Wolff, do you know the two houses at 2607 and 2609, the two upper houses in a row of four, on the west side of 10th street north of Warren street. Wm. Kreiter lived in one, I believe.

A. I remember the property.

Q. What do you think those two houses were worth in 1868, the date of this conveyance of Mr. John Bobb to his father?

A. I should say about $4,000.00.

—. Mr. Wolff, I will ask you if you collected the rents for

312 those houses on North 10th street?

A. I think I did.

Q. For whom?

A. For Charles Bobb.
Q. Was he the owner of that property at that time?
A. I so understood it.
Q. You collected the rents for him as owner?
A. Yes, sir.
Q. Do you know that McFall property which lies on Pine St.—on the south side of Pine street—near 28th street?
A. I do.
Q. Will you state to the court what was the value of that property in the year 1863?
A. I should think about $10,000.00.
Q. Do you ever remember of Mrs. Charles Bobb owning that property, Mr. Wolff?
A. I do not.
Q. Mr. Wolff, did you know this trust property; this property mentioned in this decree of John H. Bobb against Charles Bobb *et al.* that has gone to the supreme court.
A. I remember it.
Q. Now, without taking into account any interest that Mr. Charles Bobb may have had in the trust property, will you state to the court what Mr. Bobb was reputed to be worth as early as 1861, in this city.

Counsel for plaintiff objects to the question as incompent and immaterial; which objection was sustained by the court.
To which ruling of the court defendant's counsel then and there duly excepted.

Q. Will you state what Mr. Bobb was worth as early as 1861?

Counsel for the plaintiff objects to the question.
By the COURT: I think it would be proper to prove what property he had and what it was worth, but this question I don't think competent, and will sustain the objection.
Counsel for defendant then and there duly excepted to the ruling of the court.

313 Q. Mr. Wolff, did you ever hear Mr. Charles Bobb examined as surety upon a bond about 1861, or at any time after that?

Counsel for the plaintiff objected to the question as immaterial: which objection was sustained by the court.
To which ruling of the court counsel for defendant then and there duly excepted.

Q. Do you know, Mr. Wolff, what property Mr. Bobb had in 1861, '62, and '63?
A. I know a good deal that he had. I don't know that I know all that he had.
Q. Will you state what was the value from what you know of the property he had in 1862, '63, and 64, or any other date you can fix? What was the value of Mr. Bobb's property?

Objected to as immaterial and irrelevant. Objection overruled.

A. Well, at a rough calculation, I should have estimated Charles Bobb to be worth $100,000.00 at that time.

Q. Outside of the trust property altogether?

A. Yes, sir.

Q. What year would you put that at, Mr. Wolff?

A. From 1862 to 1865.

Q. Did anybody attend to the business of Mr. Charles Bobb at any time but yourself?

A. No one that I know of. Mr. John Bobb used to come to the office and give me orders at that time.

Q. Did Mrs. Bobb ever attend to any business herself concerning her own property?

A. No, sir.

Q. Who drew her rent? On whose order did you pay her rents?

A. Sometimes Mr. Bobb and sometimes on her own orders and sometimes to herself.

Cross-ex'n of M. A. Wolff.

Cross-examination by THOMAS J. ROWE, Esq.

314 —. Mr. Wolff, you say between 1862 and 1865, Mr. Charles Bobb was worth $100,000.00?

A. I did say so, according to my judgment.

Q. What property was it that he had during that time that was of that value?

A. I could not detail the property. I collected a good deal of rent for him and he was making loans, and it is a rough estimate of the value of his property.

Q. During that time you were collecting rent on this trust estate?

A. I was.

Q. He had that in charge as trustee?

A. Yes, sir.

Q. And you were collecting rents on that property?

A. I was.

Q. In making this estimate of $100,000.00, did you include that property or not?

—. I did not.

Q. Were you able to tell at that time what property Mr. Bobb owned outside of the trust property? Did you, in other words, at that time know that he had any trust property or that he was holding any real estate in trust?

A. I knew that the property around 7th and 8th and Walnut streets was trust property. There was property on Elm street and 14th street, north 10th street and Popular street, which I understood to be his own.

By Mr. KINEALY: I suppose it will be admitted that the property on 7th and 8th was property that belonged to the beneficiaries—this trust property mentioned in this decree.

By the COURT: I believe that is so understood.

By Mr. Rowe:

Q. Now give us, as near as you can, this property that was worth, as you say, $100,000.00.

A. I cannot do that, sir. I simply gave you a rough estimate of what he was worth at the time, embracing his property and loans that he had made on real estate through me. I came to that conclusion the same as any business man would about what he was worth.

315 Q. Do you know whether there was any trust fund loaned through you?

A. I don't.

Q. In making that estimate you are considering the loans made through you and it may have been from that trust fund, may it not?

A. I don't know. I know what money he brought to me to loan.

Q. At what time between 1862 and 1865 was it, you say, he was worth $100,000.00?

A. I could not definitely tell you, sir. The question was asked me particularly about what time and I said either 1862 or 1865.

Q. When did you begin that business for him?

A. On the 14th of February, 1862, if my memory is correct.

Q. How long after you commenced doing business for him did you have an opportunity of estimating what his property was worth.

A. I can only answer that question by saying that I put an estimate upon every man I do business for in my own mind.

Q. You had no occasion to investigate the matter, but you simply came to the conclusion that he was worth about that much money; that was simply your guess?

A. It was simply my guess. I made no opportunity of getting any information, because I was not interested in finding out.

Q. Did you know whether there was any incumbrance on the real estate that he owned at that time?

Objected to as incompetent and not the best evidence. Objection overruled. Defendants then and there duly excepted.

A. I did not. I have no means of knowing that.

Q. When did you cease to collect the rent for Mr. Bobb?

A. I do not remember that.

Q. Mr. Charles Bobb, I mean?

A. I cannot answer that question. I don't remember without reference to my books.

316 Q. What is your best recollection of that? About how many years did you continue doing business for him—collecting rents for him? It was up to 1872, was not it—April, 1872?

A. I had collections for him all the time.

Q. When did you commence collecting rents for Mrs. Martha E. Bobb?

A. I think since about 1875.

Q. Since 1875, or since you began collecting rents for Mrs. Martha

E. Bobb, you have done no business for Mr. Charles Bobb, have you—that is, you have collected no rents for him.

Objected to as set forth next below.

A. I have collected no rents for him; his name does not stand on my books at all.

Answer and question objected to as incompetent and irrelevant, and not tending to show that he had not another agent. Objection overruled, and defendants severally and duly excepted.

Q. In 1875 what was his financial condition?

A. I don't know, sir.

Q. Why did you cease collecting rents for Charles Bobb and begin collecting for Martha E. Bobb in 1875?

A. I was so instructed by Mr. Charles Bobb that that was the property of Martha E. Bobb, and I placed it to her credit.

Q. How do you know that Charles Bobb owned the property on 10th and Warren street, Nos. 2607 and 2609 north 10th street?

A. I had no means of knowing that he owned that property, except what he gave me charge of; in my capacity of collector I never investigate titles.

Q. When did you commence collecting rents for Nos. 2607 and 2609 North 10th street?

A. I could not swear to that, sir.

Q. It was after 1862, was it not?

A. Certainly, after that time.

317 Q. Was not it in 1870?

A. I could not tell you without reference to my books, Mr. Rowe. I have had half a million of tenants since then.

Q. Do you know whether you have collected rent for George L. Bobb?

A. I think I collected for George L. Bobb at one time, for that property. I think the title passed to him, and by instructions of Charles Bobb I transferred the account to George L. Bobb; that is my memory.

Q. What was Charles Bobb worth in 1878, Mr. Wolff?

A. I don't know.

Q. Did you have the same means of information of determining his financial condition then that you had from 1862 to 1865?

A. I think not, sir, owing to the litigation between him and his family: he was very secretive about his business matters himself, and I did not know what he was worth.

Q. Did you know what he was worth in September, 1869?

A. I think he was worth up to 1870 about what I have estimated.

Q. That is independent of the trust estate?

A. Independent of the trust fund. I think he is worth that now.

Q. Worth what?

A. Worth $100,000.00.

Q. Where is it?

A. Oh, give me something easy.

Q. How is it, then, you make an estimate of his being worth $100,000 if you are not able to point it?

A. It is simply my opinion. I don't know.

Q. It is just the same with reference to what you said in reference to his financial condition in 1865—simply your opinion?

A. No, sir; at that time he had some tangible property that I could estimate upon; at this time he has not.

Q. You did not know what his indebtedness was at that time, did you?

A. I did not; no, sir.

318 Q. Do you know of any loss that Charles Bobb has sustained—any heavy losses from 1862 up to 1878 or up to the present time?

A. I don't. I don't think he has sustained any lossess of any magnitude.

Redirect Ex'n of M. A. Wolff.

Redirect examination by Mr. MICHAEL KINEALY:

Q. Mr. Wolff, you were asked if you knew his indebtedness from 1862 to 1865. Do you know of his being indebted to anybody from 1862 to 1865?

A. I don't think I did. He was a money-loaner instead of a money-borrower.

Q. You were asked about those houses Nos. 2607 and 2609—if you did not collect rent for George L. Bobb and Charles Bobb both?

A. Yes, sir.

Q. Was it not 2603 and 2605 that you collected rent for?

A. I don't remember without reference to my books.

Q. Will you undertake to say that George L. Bobb ever did own those houses 2607 and 2609?

A. I will not, sir.

Q. Now, Mr. Wolff, you keep books, I suppose, that show whom you collect for and when you make collections and all of that?

A. I do.

Q. Have you got an account showing when you commenced collecting for Mrs. Bobb?

A. Yes, sir.

Q. Have you got one showing when you ceased collecting for Mr. Bobb?

A. The books will show that.

Q. I will ask you now—of course, this was sprung on you—you were not aware any such inquires were to be made of you?

A. I was not.

Q. I will ask you if you are quite certain that you did not commence collecting for Mrs. Martha E. Bobb as early as 1872, and if you did not continue to collect for Charles Bobb as late as

319 1876?

A. I could not tell you definitely without reference to my books.

Q. You could tell by your books, could you?
A. I could.

By Mr. KINEALY (to counsel): Now, I will ask you if you and Mr. Holmes will consent that Mr. Wolff's statements from his books as to the time he commenced to collect rents for Mrs. Martha E. Bobb and ceased collecting them for Mr. Charles Bobb may be received here without any further proof and without the trouble of bringing the books into court.

By Mr. ROWE: We will have no objection to that.

Mr. KINEALY (to Mr. Wolff): Then I will ask you, Mr. Wolff, to refresh your recollection and return here tomorrow morning.

Defendants Rest.

The defendants rested their case on the evidence.

The plaintiff offered the following evidence in rebuttal:

Mr. ROWE: We propose to offer in evidence deed of trust from Field *et al.*, recorded in Book 181, page 548, and satisfaction on the margin of the record in security for 7 notes. I want to show that prior to September or November, 1861, Charles Bobb conveyed the Childs property.

Objected to by Mrs. Martha E. Bobb as irrelevant and incompetent under the pleadings in this cause. Objection overruled and she then and there duly excepted. The deed and marginal entry on record admitted.

Deed of Trust from Field et al. to Newman's Tr.

This deed made and entered into this eighth day of April eighteen hundred and fifty-seven by and between George B. Field and Leonora, his wife, and Charles Bobb and Martha E. his wife, of the county of St. Louis and State of Missouri, parties of the first part, Sylvester V. Papin and Charles W. Hicks of the same place parties of the second part, and Socrates Newman of the same
320 place party of the third part, witnesseth: That the said parties of the first part for and in consideration of the debt and trust hereinafter mentioned and created and for the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, alien, enfeoff, convey and confirm unto the said parties of the second part, the following-described real estate, to wit: A certain lot, piece or parcel of land lying and being situated in the city of St. Louis, county of St. Louis and State of Missouri, and in block fifty-seven (57) of said city beginning at a point in the east line of Third street where the south line of Elm street intersects the same, thence with the east line of Third street southwardly, sixty-six feet, thence eastwardly and in a line parallel with the south line of Elm street one hundred and eight feet and eight inches, more or less, thence northwardly and parallel with the east line of Third

street, sixty-six feet, thence westwardly and with the south line of Elm street one hundred and eight feet and eight inches more or less, to the place of beginning; it being part of a larger lot this day conveyed by the said Socrates Newman and wife to the said George B. Field and Charles Bobb. To have and to hold the same together with all the rights, privileges and appurtenances to the same belonging or in anywise appertaining to the said parties of the second part, and to the survivor of them and to the heirs and assigns of the survivor of them forever. In trust, however, for the following purposes: Whereas, the said George B. Field and Charles Bobb have executed their seven promissory (principal) notes in favor of Socrates Newman, all bearing even date herewith, and for value received; the first of said notes being for one thousand nine hun-
321 dred and forty-four $\frac{45}{100}$ dollars due and payable in four months after date with interest at the rate of ten per centum per annum from date until paid; the second one for one thousand nine hundred and forty-four $\frac{45}{100}$ dollars, due and payable in six months after date with interest at the rate of ten per centum per annum from date until paid; the third, fourth, fifth, sixth and seventh for four thousand three hundred and thirty-three $\frac{33}{100}$ dollars each, and due and payable in one, two, three four and five years from their respective dates; the said first, second, third, fourth and fifth notes being payable to the order of said Socrates Newman, and negotiable and payable without defalcation or discount; and the said sixth and seventh notes being payable to said Socrates Newman and not made negotiable. And whereas the said George B. Field and Charles Bobb have likewise executed their ten promissory (interest) notes in favor of said Socrates Newman all bearing even date herewith and for value received, the first of said notes, being for the sum of six hundred and fifty dollars and due and payable in six months after date; the second for six hundred and fifty dollars and due and payable in twelve months after date; the third for five hundred and twenty dollars and due and payable in eighteen months after date; the fourth for five hundred and twenty dollars and due and payable in twenty-four months after date; the fifth for three hundred and ninety dollars, and due and payable in thirty months after date; the sixth for three hundred and ninety dollars and due and payable thirty-six months after date; the seventh for two hundred and sixty dollars and due and payable in forty-two months after date; the eighth for two hundred and sixty dollars and due and payable in forty-eight months after date; the ninth for onw hundred and thirty dollars and due and payable in fifty-four months after date;
322 the tenth and last one for one hundred and thirty dollars, and due and payable in sixty months after date, the first, second, third, fourth, fifth and sixth of said notes being payable to the order of said Socrates Newman and negotiable and payable without defalcation or discount; and the said seventh, eighth, ninth and tenth notes being payable to said Socrates Newman and not made negotiable. And whereas, the said George B. Field and Charles Bobb have agreed and covenanted with the said Socrates Newman to insure in some solvent insurance company doing business in the city

of St. Louis, and to keep insured in such company to the amount of ten thousand dollars, the buildings and improvements upon the premises hereinbefore conveyed until the full payment to him said Socrates Newman of eleven thousand dollars of the principal notes hereinbefore described and to assign over to said Newman the policies of insurance for said amount as security to him for the payment by said Field and Bobb of said notes. Now, therefore if the said notes shall be well and truly paid when the same become due and payable according to the tenor and effect thereof and if the above stipulations in the matter of insurance shall be complied with by the said Field and Bobb, then this deed shall be void and the property hereinbefore conveyed shall be released at the costs of the said parties of the first part; but if the said notes or any part of them, or any part of any one of them shall not be well and truly paid when the same become due and payable according to the tenor and effect thereof, together with all interest accrued thereon, or if the said stipulation concerning insurance shall not be observed, then this deed shall remain in force; and the said parties of the second part or either one of them or their legal representatives, or the legal representatives of the survivor of them, or in case the said
323 parties of the second part be dead or be absent from the county in which said property is situated, then the then sheriff of said county may proceed to sell said property hereinbefore described, or any part thereof, at public vendue to the highest bidder at the eastern front door of the court-house, in the city of St. Louis, for cash, first giving thirty days' public notice of the time, terms and place of said sale and of the property to be sold by advertisement in some newspaper printed and published in the city of St. Louis, and upon such sale shall execute and deliver a deed in fee-simple of the property sold, and receive the proceeds of said sale, out of which they shall pay, first the costs and expenses of this trust, and next whatever of said principal notes may remain unpaid whether the whole of them be then due according to their tenor or not, together with all interest accrued thereon up to the day of sale, and also all of said interest notes then due and unpaid together with all interest accrued thereon from the date of their maturity and also so much of the interest note next falling due, as would be equitably due, calculated up to the date of such sale, and the remainder if any, shall be paid to the said Charles Bobb and George B. Field. Provided always, and this deed is made with the express condition that whereas, the said Socrates Newman, did by deed of trust dated July 15, 1855, and recorded in Book 184, page 123 in the recorder's office of St. Louis county convey the premises hereinbefore described unto Chester Harding's trustees to secure unto said Chester Harding the payment of certain notes in said deed of trust mentioned and described: Now therefore it is agreed, stipulated and covenanted between the parties hereto that if the said notes or any one of them, or any part of any one of them shall not at the maturity thereof be fully satisfied by the said Socrates Newman
324 or his legal representatives, then and in that case, no sale as hereinbefore provided shall take place under this

deed of trust so long as default on the part of said Newman in relation to said notes shall exist, and so soon as said notes so secured by said deed of trust to said Chester Harding's trustees shall be fully satisfied whether such satisfaction be made at the maturity of said notes or at any time before such maturity, the said George B. Field and Charles Bobb shall if thereunto required by said Socrates Newman execute in the lieu and stead of the notes mentioned hereinbefore and described as not negotiable other notes of the same date and made payable to the order of said Socrates Newman and negotiable and payable without defalcation or discount and for like amounts and said notes shall be deemed and held as made at the execution of this deed and secured in all respects by and subject to all the conditions, covenants and stipulation of this deed of trust, and the non-negotiable notes for which such new notes shall be executed and substituted shall be delivered up to said George B. Field and Charles Bobb. And the said parties of the second part covenant to faithfully perform and fulfill the trust herein created.

In witness whereof the said parties of the first part and the said party of the third part have hereunto set their hands and seals the day and year first hereinabove written.

GEORGE B. FIELD. [SEAL.]
LEONORA FIELD. [SEAL.]
CHARLES BOBB. [SEAL.]
MARTHA E. BOBB. [SEAL.]

[On margin of folio 321.]

I, the undersigned, assignee of the *cestui que trust.* in the deed of trust recorded on this page, executed by Geo. B. Field and wife *et al.*, acknowledge to have received full satisfaction of said deed of trust, and do forever release the premises or property therein conveyed from all lien and account of said conveyance.

Witness my hand and seal this 21st day of Feb'y, 1868.

MARCUS A. WOLFF. [SEAL.]

Attest: JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI, } *ss:*
County of St. Louis, }

Be it remembered that on this eleventh day of April, eighteen hundred and fifty-seven, before me, Theophile Papin, a
325 notary public within and for the county of St. Louis aforesaid, came George B. Field and Leonora, his wife, and Charles Bobb and Martha E., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned. They, the said Leonora, wife of the said George B. Field, and the said Martha E., wife of the said Charles Bobb, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from their respective husbands, that

they executed the same and relinquished their dower in the real estate therein mentioned and conveyed freely and without compulsion or undue influence of their said husbands.

In testimony whereof I hereunto set my official signa-
[SEAL.] ture and affix my notarial seal, at office, in the city of St. Louis, county and State aforesaid, the day and year aforesaid.

THEOPHILE PAPIN,
Notary Public.

Filed and recorded April 13th, 1857.

C. KEEMLE, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, certify the foregoing to be a true copy of an instrument of writing executed by George B. Field and wife and Charles Bobb and wife to Socrates Newman's trustees, together with the release on the margin and the acknowledgment and date of filing and recording thereof, as the same remains of record in my office, in Book 181, page 548.

[SEAL.] Witness my hand and official seal this 27th day of October, 1887.

WM. A. HOBBS, *Recorder.*

326 I will also offer the deed of conveyance of the Bryan place.

We will ask the privilege of making the offer now as though the deeds were here in court.

By Mr. KINEALY: As far as I am concerned it will have the same effect as if he produced them now.

By Mr. ROWE: We want to show there was a $7,000.00 deed of trust on the Eggleston property on 13th street.

Counsel for defendant Martha E. Bobb objected to the proof as irrelevant and incompetent under the pleadings.

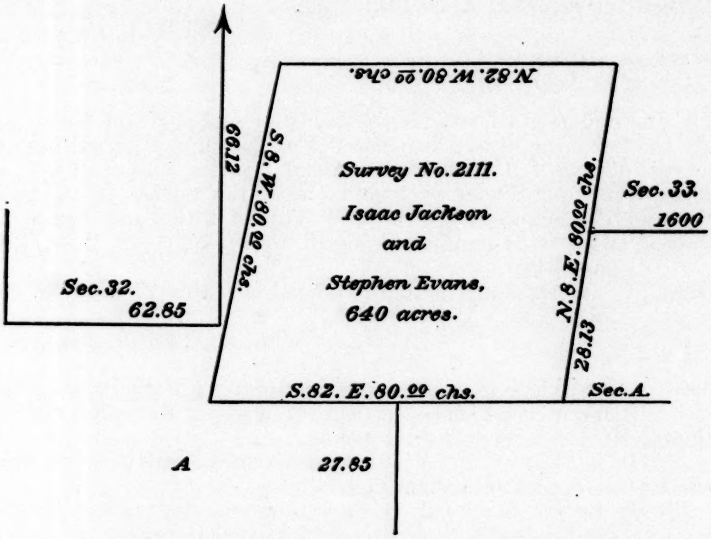
Which objection was overruled by the court; to which ruling of the court defendant, Mrs. Martha E. Bobb, then and there duly excepted.

T. M. Bryan to C. Bobb & al.

This deed, made and entered into this eighteenth day of May, eighteen hundred and fifty-eight by and between Timothy M. Bryan of the city of Philadelphia and State of Pennsylvania, party of the first part and Charles Bobb and Alexander L. Lyle of the city and county of St. Louis and State of Missouri, parties of the second part, witnesseth: That the said party of the first part, in consideration of two thousand two hundred dollars, to him paid, by the said parties of the second part, the receipt of which is hereby acknowledged, does by these presents, grant, bargain and sell, convey and confirm unto the said parties of the second part, the following-described tract of land known as the Hazel

Run tract, confirmed to Isaac Jackson and Stephen Evans, January 10th, 1806, and containing six hundred and forty acres (640) situated lying and being in St. Francois county, State of Missouri, in township- thirty-seven (37) and thirty-eight (38) north of the base line range five east of the fifth p'l meridian, it being United States survey number two thousand one hundred and eleven (2111) reference being had to said survey and the following plat:

327



Sec. 5, Jacob Masteller.—Butted and bounded as follows: North and east by public lands, south by land confirmed to Jacob Masteller and west by James Bryan's pre-emption right.

To have and to hold the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the parties of the second part, and to their heirs and assigns forever: the said Timothy M. Bryan, party of the first part hereby covenanting that he, his heirs, executors and administrators, shall and will warrant and defend the title to the premises to the said parties of the second part and to their heirs and assigns forever, against the lawful claims of all persons whomsoever claiming or to claim any part thereof.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

T. M. BRYAN. [SEAL.]

Executed in presence of—

LEWIS LAFORQUE.
J. HUTCHINSON KAY.

STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

328 Be it remembered and it is hereby certified that on this twenty-fifth day of May, A. D. 1858, before me, the subscriber, John Burns, a commissioner for the State of Missouri, commissioned by the governor thereof to reside in the State of Pennsylvania, to administer oaths and take the acknowledgment of deeds or other instruments to be recorded in that State, personally appeared T. M. Bryan, he being personally known to me to be the person named and described as the grantor in the foregoing instrument of writing, and acknowledged the same to be his act and deed.

[SEAL.] Witness my hand and seal of office.

JOHN BURNS,
Commissioner of Missouri.

STATE OF MISSOURI, } ss:
County of St. Francois, }

I, John Cobb, clerk of the circuit court and *ex officio* recorder in and for said county, certify that the foregoing deed was filed in my office for record on the 5th day of June, 1858, and that the same is truly recorded therein in Book G, on page 523.

[SEAL.] Witness my hand and official seal, hereto affixed at office, this 11th day of June, 1858.

JOHN COBB, *Recorder,*
By W. R. TAYLOR, *D. R.*

M. A. Wolff Recalled.

M. A. WOLFF, being recalled by Mr. ROWE, testified as follows:

Q. You collected rents on this Bobb property trust, did you?
A. I did.
Q. Do you know how much per month this rent amounted to?
A. I think it used to amount to about $5,000.00 or $6,000.00 a year.
Q. Didn't it rent as high as $9,000.00 a year?
A. It may have; I could not tell you from memory.
By Mr. KINEALY: That may be shown from your books, Mr. Wolff?
A. Yes, sir.

329 *Q.* By Mr. ROWE: We cannot supply certified copies by tomorrow morning, but we will supply the numbers, and when it is necessary will produce the certified copies.
By the COURT: Is that satisfactory to the parties?
By Mr. KINEALY: If they identified the deeds it is satisfactory to us.
By the COURT: Mr. Wolff may be asked as to the one point tomorrow morning, and you may not go beyond that one point, and

that is as to what his books show in reference to the question about which you have inquired.

By Mr. KINEALY: We will not desire to go any further.

At this point court adjourned until 10 o'clock tomorrow morning.

10 A. M., OCTOBER 27TH, 1887.

The case progressed as follows:

M. A. Wolff Recalled.

M. A. WOLFF, being recalled by Mr. KINEALY, testified as follows:

Q. Have you examined your books, Mr. Wolff, for the purpose of ascertaining what time you commenced collecting rents for Mrs. Martha E. Bobb?

A. I have.

Q. And when you ceased collecting rents for Mr. Charles Bobb?

A. I have; yes, sir.

Q. Will you state when you commenced collecting rents for Mrs. Martha E. Bobb?

A. My books show in 1871.

Q. At what time did you cease collecting rents for Mr. Charles Bobb?

A. The last credit of Charles Bobb on my books is June 4th, 1877.

Close of Evidence.

And this was all the evidence produced by either party.

It is admitted that all exhibits and deeds admitted in evidence were then and there read in evidence in due order.

It is admitted that all questions asked by plaintiffs' counsel and directed to be answered or answered and all deeds or papers
330 introduced in evidence by plaintiffs and admitted were each and all objected to at the time of asking or offering by Mrs. Martha E. Bobb as irrelevant and incompetent as against her under the pleadings in this cause; that those objections were severally overruled, and that said Mrs. Martha E. Bobb then and there, as each objection was overruled, duly excepted to the ruling of the court to each respective and several ruling.

And thereupon the court rendered a decree and judgment for the plaintiff.

And within four days after the rendition of said decree and in due time at the same term the defendant Martha E. Bobb filed a motion (pleading with her husband Charles Bobb) for a new trial, accompanied by her affidavit and a deed from Henry C. Bagot, by sheriff, to John H. Bobb, and a deed from John H. Bobb to Lucy G. Taylor, and also the plaintiffs filed counter affidavits of Lucy G. Taylor, Patrick Macklin, and William P. Macklin, and in reply said defendant, on the — day of ——, 1888, which was after the

motion had been submitted and was being held under advisement by the court, filed her own affidavit, which motion, deeds, and affidavits are as follows, viz:

Motion for a New Trial.

In the Circuit Court, City of St. Louis, April Term, 1888, Room 5.

JOHN H. BOBB *et al.*, Plaintiffs,
vs.
HENRY C. BAGOT, CHARLES BOBB, and MARTHA E. BOBB *et al.*, Defendants. } No. 56004.

Now comes defendant Martha E. Bobb, sued herein with her husband Charles Bobb, and moves the court to set aside the finding, judgment, and decree entered in said cause and to grant her
331 a new trial and rehearing of said cause for the reasons following, viz:

1. The court admitted illegal and incompetent evidence offered by plaintiffs on the hearing of said cause against the objections of this defendant.

2. The court excluded legal and competent evidence offered by this defendant.

3. The finding and decree of the court are each against the evidence and against the weight of the evidence.

4. The finding and decree of the court are against the law, and against the law under the evidence.

5. The finding, judgment, and decree of the court are each in favor of the plaintiffs herein when they should have been in favor of this defendant and the other defendants herein.

6. Because John H. Bobb is in fact the sole plaintiff in this suit, and that since the hearing and decision of this cause this defendant has discovered evidence that said John H. Bobb is, so fas as he is concerned, incapacitated and estopped from maintaining this suit on the pleadings herein, even if he had a cause of action, which this defendant denies, and because of defect of parties defendant, all which appears from the affidavit of this defendant and the deeds and records herewith filed and shown to the court.

7. And for the reasons set forth in this defendant's motion in arrest of judgment herewith filed.

M. KINEALY AND
JAS. R. KINEALY,
Attorneys for Defendants Martha E. Bobb and Charles Bobb.

In the Circuit Court, City of St. Louis, February Term, 1888, Room 5.

332 *Martha E. Bobb's Affidavit in Support of Motion for a New Trial.*

JOHN H. BOBB *et al.*, Plaintiff-,
vs.
HENRY C. BAGOT, CHARLES BOBB, and MARTHA E. BOBB, Defendants. } No. 56004.

Martha E. Bobb, being duly sworn, on her oath says that she is the defendant in the above cause, sued therein with her husband, Charles Bobb, and that neither at the time of nor prior to the decision of this cause by the said court was she aware of the existence of the sheriff's deed recorded in Book 676, at page 3, of the records of the office of the recorder of deeds for the city of St. Louis, State of Missouri, and which deed is dated March 21st, 1882, and recorded March 23rd, 1882, and whereby the sheriff of the said city of St. Louis, by reason of the premises therein recited, conveys to John H. Bobb, plaintiff in this cause, all the right, title, interest, estate, and property of defendant Henry C. Bagot of, in, and to the property involved in this action and described in the petition in this cause; and affiant further says that she was not aware of the facts in said deed recited until after the decision of this cause by this court as aforesaid on February 21st, 1888, and that it was not until after the decision of said cause by said court as aforesaid that affiant became aware of such facts as would lead her to suspect the existence of said deed and the facts therein recited; and affiant further states that her failure to discover the existence of said deed and the facts therein recited until after the said decision of this cause was not due to the want of due diligence in the premises.

Affiant further states that after the decision of this cause as aforesaid and after her discovery of the aforesaid deed she became aware of the existence of that certain deed whereby said Joh-
333 H. Bobb conveys the property in the petition in this cause described to one Lucy G. Taylor, and which said deed is dated June 12th, 1884, and recorded in Book 736, at page 20, of the records of the office of the said recorder of deeds of said city of St. Louis and was so recorded on June 13th, 1884; and affiant further states that prior to the decision of this said cause she was not aware of facts which would lead her to suspect the existence of said deed, and that her failure to discover the ex*histance* of said deed prior to the said decision of this said cause was not due to the want of due diligence on the part of this affiant.

Affiant further states that the said deeds herein mentioned are filed herewith.

MARTHA E. BOBB.

Subscribed and sworn to before me on this 27th day of February, A. D. 1888.

[SEAL.] C. C. LOGAN,
Notary Public.

My term expires June 28, 1889.

H. C. Bagot, by Sh'ff, to John H. Bobb.

To all to whom these presents may come I, Isaac M. Mason, sheriff of the city of St. Louis, State of Missouri, send greeting:

Whereas, on the twentieth day of January, in the year of our Lord one thousand and eight hundred and eighty-two, two judgments were rendered in the Saint Louis criminal court city of St. Louis, Missouri, wherein The State of Missouri is plaintiff and Henry C. Baggot is defendant, each for the sum of one thousand dollars debt and also for costs upon which judgment two executions were issued from the clerk's office of said court in favor of the said State of Missouri and against the said Henry C. Bagot, for the sums above mentioned, and costs, which said executions are both dated the twenty-third day of January A. D. 1882, directed to the sheriff of the city of St. Louis, and were to me the said sheriff delivered copies whereof are hereto annexed and makes part of this deed. By virtue of which said judgment and two executions, I, the
334 said sheriff, did on the twenty-first day of February, A. D. 1882, levy upon and seize all the right, title, interest, claim, estate and property of the said Henry C. Bagot, of, in and to the following-described real estate situated, lying and being in the city of St. Louis, State of Missouri, as follows, to wit:

First: A tract containing 26.92 (twenty-six and ninety-two hundredths) acres, together with the improvements thereon in United States survey No. 2976 (twenty-nine hundred and seventy-six) and bounded on the west by Goodfellow avenue, south by land conveyed by said Burd and wife to Elizabeth M. Rucker, May 1st, 1860, of record in Book 248 page 256 of the then recorder's office of the county of St. Louis, Missouri, east by land formerly of John Goodfellow and north by land of the estate of Charles Semple and the tract next herein described:

Second: A tract of 2.26 (two and twenty-six hundredths) acres in United States survey No. 1913 (nineteen hundred and thirteen) and described as follows, to wit: Beginning at a point in the north line of said survey No. 2976 where the eastern line of Goodfellow intersects with said north line of survey 2976, thence north 15° (fifteen degrees) 45 (forty-five) E. with the east line of said avenue 4 (four) chains and 20 (twenty) links to the school-house lot, thence eastwardly 60° (sixty degrees) 15 (fifteen) E. parallel to said north line of said survey 2976. 6 (six) chains and 17 (seventeen) links to a roadway 50 (fifty) links wide, thence south 29° (twenty-nine degrees) 15 (fifteen) W. with said roadway 4 (four) chains 8 (eight) links to said north line of said survey 2976, thence with said north line of said survey 2976, 4 (four) chains and 73 (seventy-three) links to the place of beginning: and having previously to the day of sale
335 hereinafter mentioned given at least twenty days' notice of the time and place of sale and of the real estate to be sold, and where situated, as the law directs, by advertisement in the St. Louis Post Dispatch, in the English language, a daily newspaper printed in said city of St. Louis; a copy of which said advertise-

ment is hereunto annexed, and makes part of this deed; by virtue of which said judgment and two executions and advertisement, I did on the eighteenth day of March in the year of our Lord eighteen hundred and eighty-two, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, agreeably to said advertisements at the east front door of the court-house in the city of St. Louis, during the — term of the circuit court, city of St. Louis, for the year eighteen hundred and eighty-two, expose to sale at public auction for ready money, all the right, title, claim, interest, estate and property of the said Henry C. Bagot, of, in and to the above-described real estate, together with all rights, privileges and appurtenances thereto belonging and John H. Bobb, being the highest and last bidder for said real estate at the price and sum of thirteen dollars $13.00. the aforesaid lots or parcels of ground was separately sold as follows, to wit: The real estate described in No. 1 herein sold for the price and sum of ten dollars; the real estate described in No. 2 herein sold for the price and sum of three dollars; said sale amounting in the aggregate to the price and sum of thirteen dollars, $13.00, the same was stricken off and sold to the said John H. Bobb, for that sum. Now, therefore, know ye, that in consideration of the premises and of the said sum of thirteen dollars to me in hand paid by the said John H. Bobb, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, Isaac M. Mason, sheriff as aforesaid,
336 do hereby assign, transfer and convey to him the said John H. Bobb, all the right, title, interest, claim, estate and property of him the said Henry C. Bagot, of, in and to the above mentioned and described property, that I might sell, as sheriff as aforesaid, by virtue of the aforesaid judgment, judgments and two executions and advertisement.

To have and to hold the same to him the said John H. Bobb and to his heirs and assigns forever, with all the rights, privileges and appurtenances thereunto belonging.

In witness whereof, I, Isaac M. Mason, sheriff of the city of St. Louis, have hereunto set my hand and seal this twenty-first day of March in the year of our Lord, one thousand eight hundred and eighty-two.

ISAAC M. MASON, *Sheriff.* [SEAL.]

In the Circuit Court, City of St. Louis, Missouri, February Term, 1882.

TUESDAY, *March* 21, 1882.

Be it remembered that on this day came into court Isaac M. Mason, Esquire, sheriff of the city of St. Louis, and acknowledged the execution of the foregoing deed by him as sheriff as aforesaid in favor of John H. Bobb for all the right, title, interest, claim, estate, and property of Henry C. Bagot of, in, and to the property therein described as being conveyed by said deed; which acknowledgment is entered on the record of said court of said date. Record No. 90, p. 316.

In testimony whereof I hereto set my hand and affix
[SEAL.] the seal of said court, at office, in the city of St. Louis, the day and year last aforesaid.

CHAS. F. VOGEL, *Clerk.*

337 *Sheriff's Sale.*

By virtue and authority of two executions issued from the office of the clerk of the criminal court of the city of St. Louis, returnable to the March term, 1882, of said court, and to me directed, in favor of the State of Missouri and against Henry C. Bagot, I have levied upon and seized all the right, title, and interest of the defendant in and to the following-described real estate situated in the city of St. Louis and State of Missouri and described as follows, to wit:

First. A tract containing 23.92 (twenty-six and ninety-two hundredths) acres, together with improvements thereon in the United States survey No. 2976 (twenty-nine hundred and seventy-six), bounded on the west by Goodfellow avenue, south by land conveyed by said Burd and wife to Elizabeth M. Rucker, May 1, 1860, of record in Book 248, page 256, of the then recorder's office of the county of St. Louis, Missouri, east by land formerly of John Goodfellow and north by land of the estate of Charles Semple and the tract next herein described.

Second. A tract of 2.26 (two and twenty-six hundredths) acres in United States survey No. 1913 (nineteen hundred and thirteen), and described as follows, to wit: Beginning at a point in the north line of survey No. 2976 where the eastern line of Goodfellow intersects with said north line of survey 2976; thence north 15° (fifteen degrees) 45 (forty-five) E. with the east line of said avenue 4 (four) chains and 20 (twenty) links to the school-house lot; thence eastwardly 60° (sixty degrees) 15 (fifteen) E. parallel to said north line of said survey No. 2976 6 (six) chains and 17 (seventeen) links to a roadway 50 (fifty) links wide; thence south 29° (twenty-nine) degrees 15 (fifteen) W. with said roadway 4 (four) chains 8 (eight) links to said north line of said survey 2976; thence with said
338 north line of said survey 2976 4 (four) chains and 73 (seventy-three) links to the place of beginning; and I will on Saturday, the 18th day of March, 1882, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the east front door of the court-house, in the city of St. Louis, State of Missouri, sell at public aution for cash, to the highest bidder, all the right, title, interest, claim, estate, and property of the above-named Henry C. Bagot, of, in, and to the above-described property to satisfy said execution and costs.

ISAAC M. MASON,
Sheriff, City of St. Louis, Mo.

CITY OF ST. LOUIS, *ss:*

ST. LOUIS, MO., *February* 21, 1882.

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

Whereas, on the twentieth day of January, in the year of our Lord one thousand eight hundred and eighty-two, at our St. Louis criminal court, before our judge thereof, the State of Missouri recovered against Henry C. Bagot her debt of one thousand dollars, together with the costs thereon accrued, these are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Henry C. Bagot in your bailiwick you cause to be made the aforesaid debt and costs, and that you have the same before our said court on the first day of the next term thereof, to be begun and held at the city of St. Louis on the first Monday of March next, then and there to satisfy the said debt and costs of the aforesaid State of Missouri; and have you then and there this writ, with your return thereon how you execute the same.

Witness Andrew J. Clabby, clerk of our said court, with
[SEAL.] the seal thereof, hereto affixed, at office, in the city of St. Louis, this twenty-third day of January, in the year of our
339 Lord one thousand eight hundred and eighty-two.

ANDREW J. CLABBY,
Clerk C. C.

A true copy.

ISAAC M. MASON, *Sh'ff,*
By WM. H. MASON, *Deputy.*

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

Whereas, on the twentieth day of January, in the year of our Lord one thousand eight hundred and eighty-two, at our St. Louis criminal court, before our judge thereof, the State of Missouri recovered against Henry C. Bagot her debt of one thousand dollars, together with the costs thereon accrued, these are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Henry C. Bagot in your bailiwick you cause to be made the aforesaid debt and costs, and that you have the same before our said court on the first day of the next term thereof, to be begun and held at the city of St. Louis on the first Monday of March next, then and there to satisfy the said debt and costs of the aforesaid State of Missouri; and have you then and there this writ, with your return thereon how you execute the same.

Witness Andrew J. Clabby, clerk of our said court, with the seal thereof, hereto affixed, at office, in the city of St. Louis, this 23d day of January, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

ANDREW J. CLABBY,
Clerk C. C.

A true copy.

ISAAC M. MASON, *Sheriff,*
By WM. H. MASON, *Deputy.*

Filed and recorded March 23, 1882, at 1.50 p. m.
C. W. IRWIN, *Recorder.*

NOTE.—The words "St. Louis criminal," on line 26, page 3; "city," on line 25, and "city" twice on line 41, and "sheriff," on lines 25 & 41, page 5, of this record, are interlined in the original deed, as was also the word were, on line 25, page 3.

340 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certify the foregoing to be a true copy of an instrument of writing executed by Henry C. Bagot, by sheriff, to John H. Bobb, together with the acknowledgment, &c., and date of filing and recording thereof, as the same remains on record in my office in Book 676, page 3.

In witness whereof I have hereunto set my hand and
[SEAL.] official seal this 23d day of February, A. D. 1888.
WM. A. HOBBS, *Recorder.*

Deed of John H. Bobb to Lucy G. Taylor.

This deed made and entered into this 12th day of June eighteen hundred and eighty-four, by and between John H. Bobb (a single man) of the city of St. Louis and State of Missouri, party of the first, and Lucy G. Taylor of the same place party of the second part, witnesseth: That the said party of the first part, in consideration of thirty thousand dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents, remise, release and forever quitclaim unto the said party of the second part, the following-described real estate situated in the city of St. Louis, and State of Missouri, to wit:

1. The eastern twenty feet of lot 49 in block one of Lane and Renick's addition to the city of St. Louis and in block 444 north of said city, fronting twenty feet on the southern line of Poplar street by a depth southwardly of 100 feet to an alley, R. part of lot 39 of Peter Lindell'- second addition to the city of St. Louis, beginning at the northwest corner of said lot 39 and running thence eastwardly along the southern line of Baker avenue one hundred feet, thence southwardly and parallel with Cornelia avenue 223 feet 2¼ inches
to the center line of said lot 39, thence westwardly along
341 the center line of said lot 39, one hundred feet to Cornelia avenue, and thence northwardly along the eastern line of Cornelia avenue 223 feet 2¼ inches to the beginning.

3. A tract of land, containing 26.92 acres in United States survey 2976, bounded west by Goodfellow avenue, south by land conveyed by Burd and wife to Elizabeth M. Rucker by deed dated May 1st 1860, and of record in Book 248 page 256 of the St. Louis city recorder's office. East by land formerly of John Goodfellow, and north by land now or formerly of the estate of Chas. Semple and the tract next herein described.

4. A tract of land containing 2.26 acres in United States survey No. 1913 beginning at a point in the north line of U. S. survey 2976, where the same is intersected by the eastern line of Goodfellow avenue, thence running north 15 45′ east with the eastern line of said avenue 4 chains and 20 links, to the school-house lot, thence east 60 15′ east and parallel with the north line of said U. S. survey 2976, six chains 17 links to a 50 links roadway thence south 29 15′ west with the said roadway 4 chains and 8 links to the north line of U. S. survey 2976, and thence with said north line of said survey 2976 four chains and 73 links to the beginning, being the same acquired by said —— —— by party of the first part by sheriff's deed dated April 26th 1882, and recorded in Book 680, page 31 and by sheriff's deed dated March 21st, 1882 and recorded in Book 676 page 3 of the present St. Louis city recorder's office.

To have and to hold the same, together with all the rights, immunities, privileges and appurtenances to the same belonging unto the party of the second part, and to her heirs and assigns forever.

In witness whereof, the said party of the first part has
342 hereunto set his hand and seal the day and year first above written.

JOHN H. BOBB. [SEAL.]

Executed in presence of—
—— ——.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this 13th day of June, 1884, before me personally appeared John H. Bobb, who declared himself to be single and unmarried, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal, at office, in the city of St. Louis and State aforesaid, the day and year first above written.
[SEAL.]

My term as notary expires July 6th, 1885.

MORRISON RENSHAW,
Notary Public, City of St. Louis, Mo.

Filed and recorded June 13th, 1884, a- 9.39 a. m.

THOS. F. FARRELLY, *Recorder.*

NOTE.—The word "links," on line 22, page 21, of this record, is interline- in the original deed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds for said city and State, do hereby certofy the foregoing to be a true copy of an instrument of writing execited by John H. Bobb to Lucy G. Taylor, together with the acknowledgment and date of filing and recording thereof as the same remains of record in my office in Book 736, page 20.

In witness whereof I have hereunto set my hand and official seal this twenty-third day of February, A. D. 1888.
[SEAL.]
WM. A. HOBBS, *Recorder.*

343 *Affidavit of Lucy G. Taylor.*

In the Circuit Court of St. Louis, Mo., February Term, A. D. 1888.

JOHN H. BOBB *et al.*, Plaintiffs,
vs.
HENRY C. BAGOT *et al.*, Defendants.

In the circuit court of St. Louis, Mo., February term, A. D. 1888.

STATE OF MISSOURI,
City of St. Louis.

Lucy G. Taylor, of lawful age, being duly sworn, on her oath says that the deed from Henry C. Bagot, by sheriff, to John H. Bobb, mentioned in the affidavit of Martha E. Bobb herein, was filed for record in the office of the recorder of deeds for the city of St. Louis, Missouri, on March 23d, 1882, at 1.50 o'clock p. m., and that Isaac M. Mason, sheriff of the city of St. Louis, Mo., on the 21st day of February, 1882, levied upon and seized all the right, title, interest, claim, estate, and property of said Henry C. Bagot of, in, and to the property described in said deed by virtue of two judgments rendered by the St. Louis criminal court, wherein The State of Missouri is plaintiff and Henry C. Bagot is defendant, and two executions issued on said judgments, which executions are dated January 23d, 1882; and said Isaac M. Mason advertised said real estate for sale for 20 days in the St. Louis Post-Dispatch, as the law directed, and the said sheriff did expose said real estate for sale at the east front door of the court-house of the city of St. Louis, Missouri, on March 18th, 1882, and the same was stricken off and sold to said John H. Bobb.

That the deed from Burd, by trustee, to Henry C. Bagot was recorded February 28th, 1882; that deed from Henry C. Bagot to John Letcher was recorded February 28th, 1882; that the deed from John Letcher and wife to Martha E. Bobb was recorded
344 March 16th, 1882, two days before the aforesaid sale by sheriff.

Affiant further says that she is informed and believes that on March 18th, 1882, on the day of said sheriff's sale and at said sheriff's sale, defendant Chas. Bobb, with one L. A. McGinnis, before said sale, warned all purchasers that Henry C. Bagot had no title to said property; that he had, previous to the levy of said executions, conveyed away all his interest in same, and that the deeds showing such conveyance was of record in recorder's office.

That John H. Bobb made a quitclaim deed to Lucy G. Taylor June 12, 1884, and said deed was recorded June 13, 1884, in St. Louis recorder's office; that during the trial of the case of Martha E. Bobb *et al. vs.* Lucy G. Taylor *et al.*, before Justice R. Cohen, on June 25th, 1886, this affiant, in the presence of Charles Bobb, Martha

E. Bobb, and Michael Kinealy, stated that she did have title deeds to the property described in the above deeds, and at said trial Thomas J. Rowe, attorney for this affiant in said cause, offered in evidence said deed of Henry C. Bagot, by sheriff, to John H. Bobb and said deed of John H. Bobb to Lucy G. Taylor, and that Michael Kinealy, attorney for Martha E. Bobb and Chas. Bobb, objected to their introduction in the presence and hearing of said Chas. Bobb and Martha E. Bobb, and that said deeds were excluded by the said Justice Cohen.

That at said time and place said defendants, Martha E. and her husband, Chas. Bobb, had an opportunity to examine and inspect said deeds, and that their attorney, M. Kinealy, also had an opportunity to examine and inspect said deeds.

LUCY G. TAYLOR.

[SEAL.] Subscribed and sworn to before me this 1st day of March, 1888.

PHILIP H. ZEPP,
Clerk Circuit Court.

345 STATE OF MISSOURI, } ss:
City of St. Louis, }

Affidavit of Pat'k Macklin.

In the Circuit Court, City of St. Louis, Mo., February Term, A. D. 1888.

JOHN H. BOBB *et al.*, Plaintiffs, }
vs. }
HENRY C. BAGOT *et al.*, Defendants. }

Patrick Macklin, of lawful age, being duly sworn, on his oath says that he was present during the trial of the case of Martha E. Bobb *et al. vs.* Lucy G. Taylor *et al.*, before Justice R. Cohen, in the city of St. Louis, Mo., on June 25th, 1886, and that he heard Lucy G. Taylor testify, in the presence and hearing of Charles Bobb, Martha E. Bobb, and Michael Kinealy, that she did have title deeds to the property spoken of by the parties to the cause as the Burd place, and that Thomas J. Rowe, as attorney for Lucy G. Taylor, offered two deeds in evidence as affecting the title to said property, and that M. Kinealy, attorney for Martha E. Bobb and Charles Bobb, objected to their introduction in evidence in presence and hearing of Charles Bobb and Martha E. Bobb, and that said Charles Bobb and Martha E. Bobb and their attorney, M. Kinealy, at said time and place had an opportunity to examine and inspect said deed.

PATRICK MACKLIN.

Subscribed and sworn to before me this 1st day of March, 1888.

[SEAL.] PHILIP H. ZEPP,
Clerk Circuit Court.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, Mo., February Term.

JOHN H. BOBB *et al.*, Plaintiffs, }
vs.
HENRY C. BAGOT *et al.*, Defendants. }

346 *Affidavit of Wm. P. Macklin.*

William P. Macklin, of lawful age, being duly sworn, on his oath says that he was present during the trial of the case of Martha E. Bobb *et al. vs.* Lucy G. Taylor *et al.*, before Justice R. Cohen, in the city of St. Louis, Mo., on June 25th, 1886, and that he heard Lucy G. Taylor testify in the presence and hearing of Charles Bobb, Martha E. Bobb, and M. Kinealy that she did have title deeds to the property spoken of by the parties to the cause as the Burd place, and that Thomas J. Rowe, as attorney for Lucy G. Taylor, offered two deeds in evidence as affecting the title to said property, and that M. Kinealy, attorney for Martha E. Bobb and Charles Bobb, objected to their introduction in evidence in the presence and hearing of Charles Bobb and Martha E. Bobb, and that said Charles Bobb and Martha E. Bobb and their attorney, M. Kinealy, at said time and place had an opportunity to examine and inspect said deeds.

WILLIAM P. MACKLIN.

Subscribed and sworn to before me this 1st day of March, 1888.

[SEAL.] PHILIP H. ZEPP,
Clerk Circuit Court.

Affidavit of Martha E. Bobb in Reply.

Circuit Court, City of St. Louis, Room No. 5.

BOBB *et al.* }
vs.
BAGOTT *et al.* }

Martha E. Bobb, being duly sworn, on her oath says that she read the affidavits of Lucy G. Taylor, Patrick Macklin, and William P. Macklin, and that the statements therein that this affiant heard on the trial mentioned in said affidavits any offer made or notice given or had information of the existence of any deed from Henry C. Baggot by sheriff to John H. Bobb or from John H. Bobb to Lucy G. Taylor *is* utterly untrue. Affiant further states that
347 her recollection is that on said trial said Patrick Macklin was excluded from the court-room and could not have heard the matters to which he makes oath in said affidavit; and further affiant saith not.

MARTHA E. BOBB,

[SEAL.] Subscribed and sworn to this 5th day of March, A. D. 1888, before me—

C. C. LOGAN,
Notary Public.

My term expires June 28th, 1889.

To the hon. probate court of the city of St. Louis:

The undersigned, administrator *d. b. n.* of Charles L. Bobb, deceased, would respectfully state that said court at its June term, 1883, to wit, on the 16th day of June, 1883, made an order for the sale of a certain judgment and all causes of action thereon against Charles Bobb rendered against Charles Bobb on the 15th day of June, 1878, by the circuit court of the city of St. Louis for the sum of $18,382.59 and in favor of the estate of Charles L. Bobb, deceased.

The said administrator further states that in pursuance of said order of sale he caused an advertisement, stating the time, terms, and place of sale, and also a description of the property to be sold, to be published ten times, the first insertion being on the 17th day of July, 1883, being more than ten days' notice, in the city of St. Louis, State of Missouri, as appears by the affidavit of John A. Cockerill, one of the publishers of said newspaper, which, together with a copy of said advertisement, is hereto annexed and made a part of this report and marked "Exhibit A."

That in pursuance of said order of sale and said advertisement said administrator, on the 28th day of July, 1883, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, at the east front door of the court-house, in said city and State, exposed to sale at public vendue or outcry the said judgment for cash, and
348 at said sale John H. Bobb was the highest, last, and best bidder for the same, and it was struck off and sold to him at and for the sum of twelve hundred dollars.

All of which is respectfully submitted, and said administrator asks said court to approve the same.

D. A. JAMISON,
Administrator d. b. n. of Charles L. Bobb, Deceased.

STATE OF MISSOURI, } ss:
City of St. Louis, }

D. A. Jamison, administrator *d. b. n.* of Chas. L. Bobb, deceased, being duly sworn, upon his oath says that the foregoing
285 "A." report and the matters, facts, and things as herein stated are true, and that he did not, directly or indirectly, pur-
285 "B." chase said judgment or any part thereof or any interest therein, and that he is not interested in the said property sold as aforesaid except as stated in said report.

D. A. JAMISON.

Sworn to and subscribed before me on this 18th day of September, 1883.

W. E. WAGNER, *Clerk.*

Filed Sept. 18th, 1883.

Probate Court Proceedings in the Estate of Charles Bobb.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Probate Court for the City of St. Louis, September Term, 1883.

Estate of CHARLES L. BOBB.

Report of sale of judgment approved.

TUESDAY, *September 18th*, 1883.

Now comes Dorsey A Jamison, administrator *de bonis non* of the estate of Charles L. Bobb, deceased, and exhibits a report of
349 his proceedings in making sale of a certain judgment for $18,382.59, rendered on June 15th, 1878, by the circuit court, city of St. Louis, in favor of said estate and against Charles Bobb, under an order of this court made at the last June term thereof; from which said report it appears that said judgment was sold to John H. Bobb at and for the price and sum of twelve hundred dollars in cash; and the court, having examined said report and being fully advised in the premises, doth order and adjudge that said report and the proceedings of said administrator therein set forth be, and they are hereby, approved and said sale confirmed.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Wm. E. Wagner, clerk of the probate court within and for the city of St. Louis aforesaid, do hereby certify the foregoing to be the true and complete copies of the report of sale of judgment against Charles Bobb filed by D. A. Jamison, administrator *d. b. n.* of Charles L. Bobb, deceased, and of the order approving same, as fully as the same respectively remain on file and appear of record in my said office.

In witness whereof I hereto set my hand and affix the seal of said court, at office, in St. Louis, this 28th day of February, 1888.

[Seal of Probate Court, St. Louis.]

W. E. WAGNER, *Clerk.*

And the other defendants also filed their motion for a new trial within four days after the rendition of said decree and in due time at the same term; which motion is as follows:

In the Circuit Court, City of St. Louis, February Term, 1888, Room 5.

350 JOHN H. BOBB *et al.*, Plaintiffs,
vs.
HENRY C. BAGOT, MARTHA E. BOBB and CHARLES BOBB, *et al.* } No. 56004.

Motion for a New Trial by Defendants Bagot and Charles Bobb.

Now come defendants Henry C. Bagot and Charles Bobb and severally move the court to set aside the finding, judgment, and decree entered in said cause and to grant them a new trial and rehearing of said cause for the reasons following, viz:

285 C. 1. The court admitted illegal and incompetent evidence offered by plaintiff on the hearing of said cause against the objection of these defendants.

2. The court excluded legal and competent evidence offered by these defendants on said hearing.

3. The finding and decree of the court are against the evidence and against the weight of the evidence.

4. The finding and decree of the court are each against the law and against the law under the evidence.

5. The finding, judgment, and decree of this court in this cause are respectively in favor of the plaintiffs when they should have been in favor of the defendants.

6. And for the 6th reason stated in the motion for rehearing of defendant Martha E. Bobb in this cause.

M. KINEALY AND
JAS. R. KINEALY,
Attorneys for said Defendants.

And defendant Martha E. Bobb filed a motion in arrest of judgment within four days after the rendition of said decree and in due time at the same term; which motion is as follows:

In the Circuit Court, City of St. Louis, February Term, 1888, Room 5.

351 JOHN H. BOBB *et al.*, Plaintiffs,
vs.
HENRY C. BAGOT, MARTHA E. BOBB, and CHARLES BOBB, *et al.*, Defendants. } No. 56004.

Motion in Arrest of Judg't by M. E. Bobb.

Defendant Martha E. Bobb, sued with her husband, Charles Bobb, herein, comes and moves the court to arrest the judgment in this cause for the reasons following, viz:

1. The petition in this cause does not state facts constituting a cause of action against defendant Martha E. Bobb or showing she is a necessary party to this suit.

2. On the petition and pleadings in this cause no relief ought to have been granted against this defendant, Martha E. Bobb.

3. The decree in this cause against this defendant, Martha E. Bobb, is not responsive to or in accordance with the pleadings in this cause, and it operates as a surprise and injustice on defendant Martha E. Bobb.

4. The decree herein makes the property of defendant Martha E. Bobb primarily liable for the costs of this cause.

M. KINEALY AND
JAS R. KINEALY,
Attorneys for Defendants Martha E. Bobb and Charles Bobb.

And said motions coming on to be heard were overruled by the court at the same time.

And the defendants each and all, jointly and severally, then and there duly excepted to the action and ruling of the court in overruling said motion for a new trial filed by said Martha E. Bobb, and also then and there duly excepted to the action and ruling of the court in overruling said motion for a new trial filed by the defendants Bagot and Charles Bobb, and then and there duly excepted to the action and ruling of the court in overruling said mo-
352 tion in arrest of judgment.

Wherefore, to the end that all the foregoing several matters, acts, and rulings may be preserved of record, defendants each and all pray that this their bill of exceptions be signed and sealed and made a part of the record, and the same is accordingly done.

L. B. VALLIANT, *Judge.* [SEAL.]

And afterwards, at said February term, 1888, of said court, the following further proceedings were had in said cause, to wit:

Appeal Allowed Defendants to Supreme Court.

CHARLES L. BOBB'S ADM'R & *al.*
vs.
HENRY C. BAGOT *et al.*

THURSDAY, *March 29th*, 1888.

Now, at this day, come the defendants, by attorney, and file herein their affidavit for appeal, and on their motion it is ordered by the court that the defendants be allowed an appeal to the supreme court of the State of Missouri from the decree herein rendered. Appeal bond approved and filed.

Which said affidavit for appeal and appeal bond are respectively in words and figures as follows, to wit:

Affidavit for Appeal.

STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, February Term, 1888.

D. A. JAMISON, Adm'r, &c., & *al.*,
vs.
HENRY C. BAGOT, MARTHA E. BOBB, *et al.*

353 Michael Kinealy, attorney for defendants and acting herein on their behalf, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

MICHAEL KINEALY.

Subscribed and sworn to before me this 29th day of March, A. D. 1888.

PHILIP H. ZEPP, *Clerk.*

Appeal Bond.

Know all men by these presents that we, Martha E. Bobb and Charles Bobb, as principals, and Marcus A. Wolff and Nathan D. Allen, as sureties, are held and firmly bound unto Dorsey A. Jamison, adm'r, &c., and John H. Bobb in the sum of twenty-five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis this — day of March, A. D. 1888.

The condition of the above obligation is such that whereas Martha E. Bobb, Charles Bobb, and Henry C. Bagot have appealed from the judgment rendered against them and in favor of Dorsey A. Jamison, adm'r, &c., and John H. Bobb in the circuit court, city of St. Louis, together with costs:

Now, if the said appellant- shall prosecute their appeal with due diligence to a decision in the supreme court of the State of Missouri and shall perform such judgment as shall be given by the said supreme court or such as the said supreme court may direct the circuit court, city of St. Louis, to give, and if the judgment of said circuit court or any part thereof be affirmed and said
354 appellant- shall comply with and perform the same so far as it may be affirmed and pay all damages and costs which may be awarded against them by the said supreme court, then this obligation to be void; otherwise to remain in full force and effect.

MARTHA E. BOBB. [SEAL.]
CHARLES BOBB. [SEAL.]
MARCUS A. WOLFF. [SEAL.]
NATHAN D. ALLEN. [SEAL.]

Approved in open court this 29th day of March, 1888.
Attest: PHILIP H. ZEPP, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Certificate of Clerk.

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis, certify the foregoing to be a full, true, and complete transcript of the record and proceedings in a certain cause wherein Dorsey A. Jamison, as administrator *de bonis non* of Charles L. Bobb, deceased, and John H. Bobb are plaintiffs and Henry C. Bagot and others are defendants as fully as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at office, in the city of St. Louis, this 9th day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.] PHILIP H. ZEPP, *Clerk.*

355 And afterwards, to wit, on the 14th day of October, 1890, the following appears of record, to wit:

STATE OF MISSOURI, *sct:*

Be it remembered that at a term of the supreme court of the State of Missouri, begun and held at the city of Jefferson, county of Cole and State aforesaid, on the second Tuesday in October, A. D. 1890, it being the 14th day of the month, there were present Honorable R. D. Ray, chief justice, Honorable F. M. Black and Honorable Shepard Barclay, associate justices; Henry W. Ewing, clerk, and S. C. Noland, marshal.

And on the same day the further following proceedings were had in said cause, to wit:

D. A. JAMISON, Adm'r, Resp., }
v.
H. C. BAGOT *et al.*, App. }

Come now the said parties, by attorneys, and file their stipulations perfecting the record herein and asking for an extension of time in which to file briefs. Come also the said appellants, by attorney, and file their petition asking leave to withdraw the transcript herein and to amend the same.

Which said stipulation perfecting the record herein is in words and figures as follows, to wit:

In the Supreme Court, October Term, 1890.

DORSEY A. JAMISON *et al.*, Respondents, }
vs.
HENRY C. BAGOT *et al.*, Appellants. }

It is agreed that the following part of the introduction to the deposition of Martha E. Bobb, read in evidence by plaintiff on the trial

of this cause and omitted from the transcript by mistake, may be taken and read in this court as a part of the record of
356 said cause now on appeal in this court with same effect as if it had been inserted in the transcript of the record here filed.

Depositions of witnessess produced, sworn, and examined on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and eighty-one, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of Messrs. Lee and Chandler, S. E. corner Fifth and Olive streets, in the city of St. Louis, State of Missouri, before me, Chas. E. Weller, a notary public within and for the city of St. Louis, in the State of Missouri, in a certain cause now pending in the circuit court of the city of St. Louis, in the State of Missouri, between John H. Bobb, plaintiff, and Henry C. Bagot, John Letcher, Charles Bobb, and Martha E. Bobb, defendants, on the part of the plaintiff.

T. J. ROWE, *Att'y for Respondents.*
M. KINEALY & JAS. R. KINEALY,
Att'ys for Appellants.

And which said stipulation for an extension of time in which to file briefs is in words and figures as follows, to wit:

In the Supreme Court of Missouri.

D. A. JAMISON, Adm'r, *et al.*, Resp.,
vs.
H. C. BAGOT *et al.*, App. } No. 4916.

ST. LOUIS, *Sept.* 22*nd*, 1890.

It is hereby stipulated and agreed that appellants may have until Oct. 9th, 1890, inclusive, to serve copy of their brief on respondents, and that respondents may have until Oct. 29th, 1890, inclusive, to serve copy of their brief on appellants, and appellants may have until Nov. 3rd, 1890, inclusive, to serve reply on respondents.
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T. J. ROWE, *Att'y for Respondents.*
M. KINEALY & JAS. R. KINEALY,
Att'ys for App'l't.

And which said petition to withdraw the transcript herein and amend the same is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1890.

DORSEY A. JAMISON, Adm'r, and JOHN H. BOBB, Respondents,
vs.
HENRY C. BAGOT, MARTHA E. BOBB, *et al.*, Appellants.

To the honorable supreme court of Missouri:

Your petitioner, Martha E. Bobb, respectfully represents that after the rendition of the decree in the above-entitled cause she filed mo-

tion for a new trial and alleged as one of the reasons why the same should be sustained the following:

"6. Because John H. Bobb is in fact the sole plaintiff in this suit, and that since the hearing and decision of this cause this defendant has discovered evidence that said John H. Boob is, so far as he is concerned, incapacitated and estopped from maintaining this suit on the pleadings herein, even if he had a cause of action, which this defendant denies, and because of defect of parties defendant; all which appears from the affidavit of this defendant and the deeds and records herewith filed and shown to the court."

That the record alluded to in said motion was duly filed as an exhibit to said motion for a new trial and submitted to the court with the deeds above mentioned, as appears by the certified copy of the entry of filing of said exhibit and of said exhibit itself, which are herewith filed and made a part of this petition; that said
358 exhibit was a transcript of the record of the probate court of the city of St. Louis, showing that John H. Bobb is the sole and only owner of the interest of Dorsey A. Jamison in the above-entitled cause and in the judgment mentioned in the petition therein, and is the sole party in interest, plaintiff, in said cause against your petitioner.

That by inadvertence said exhibit was not called for in the bill of exceptions in said cause and therefore has not been set forth in the transcript on file; that said exhibit is material evidence in this cause on this appeal, as will appear from the following copy of it:

"To the hon. probate court of the city of St. Louis:

"The undersigned administrator *d. b. n.* of Charles T. Bobb, deceased, would respectfully state that said court at its June term 1883, to wit, on the 16th day of June, 1883, made an order for the sale of a certain judgment and all causes of action thereon against Charles Bobb, rendered against Charles Bobb on the 15th day of June, 1878, by the circuit court of the city of St. Louis for the sum of $18,382.59 and in favor of the estate of Charles L. Bobb, deceased.

"The said administrator further states, that in pursuance of said order of sale he caused an advertisement, stating the time, terms and place of sale, and also a description of the property to be sold, to be published ten times, the first insertion being on the 17th day of July, 1883, being more than ten days' notice in the city of St. Louis, State of Missouri, as appears by the affidavit of John A. Cockerill one of the publishers of said newspaper, which, together with a copy of said advertisement, is hereto annexed and made a part of this report and marked 'Exhibit A.'

"That in pursuance of said order of sale and said advertisement, said administrator on the 28th day of July, 1883, between the hours of ten o'clock a. m. and four o'clock p. m. of said day at the east front door of the court-house in said city and State exposed to sale at public vendue or outcry the said judgment for cash, and
359 at said sale John H. Bobb was the highest, last and best

bidder for the same, and it was struck off and sold to him at and for the sum of twelve hundred dollars.

"All of which is respectfully submittted and said administrator asks said court to approve the same.

"D. A. JAMISON,
"*Administrator d. b. n. of Chas. L. Bobb, Deceased.*

"STATE OF MISSOURI, } ss:
City of St. Louis, }

"D. A. Jamison, administrator *d. b. n.* of Chas. L. Bobb, deceased, being duly sworn, upon his oath says that the foregoing report and the matters, facts and things as therein stated are true and that he did not directly or indirectly purchase said judgment or any part thereof or any interest therein and that he is not interested in the said property sold as aforesaid except as stated in said report.

"D. A. JAMISON.

"Sworn to and subscribed before me on this 18th day of September, 1883.

"W. E. WAGNER, *Clerk.*

"Filed Sept. 18th, 1883.

"STATE OF MISSOURI, } ss:
City of St. Louis, }

"In the Probate Court for the City of St. Louis, September Term, 1883.

"TUESDAY, *September 18th*, 1883.

"Estate of CHARLES L. BOBB.

"*Report of Sale of Judgment Approved.*

"Now comes Dorsey A. Jamison, administrator *de bonis non* of the estate of Charles L. Bobb, deceased, and exhibits a report of his proceedings in making sale of a certain judgment for $18,382.50, rendered on June 15th, 1878, by the circuit court, city of St. Louis, in favor of said estate and against Charles Bobb under an
360 order of this court made at the last June term thereof; from which said report it appears that said judgment was sold to John H. Bobb at and for the price and sum of twelve hundred dollars in cash: and the court having examined said report and being fully advised in the premises, doth order and adjudge that said report and the proceedings of said administrator therein set forth be and they are hereby approved and said sale confirmed.

"STATE OF MISSOURI, } ss:
City of St. Louis, }

"Wm. E. Wagner, clerk of the probate court within and for the city of St. Louis aforesaid, do hereby certify the foregoing to be the true and complete copies of the report of sale of judgment against

Charles Bobb filed by D. A. Jamison, administrator *d. b. n.* of Charles L. Bobb, deceased, and of the order approving same, as fully as the same respectively remain on file and appear of record in my said office.

"In witness whereof I hereto set my hand and affix the seal of said court at office in St. Louis, this 28th day of February, 1888.

"[Seal of Probate Court, St. Louis.]

"W. E. WAGNER, *Clerk.*"

Wherefore your petitioner prays the court to permit your petitioner to withdraw the record of said cause from this court, so as to have an amendment in and of said bill of exceptions made by the judge to whom said motion was submitted and by whom said bill of exceptions was signed by inserting or by causing to be inserted said exhibit in said bill of exceptions, and for such other order in the premises as to the court shall seem fit.

MARTHA E. BOBB.

STATE OF MISSOURI, } *ss*:
City of St. Louis, }

Martha E. Bobb, the above-named petitioner, being duly
361 sworn, on her oath says that the matters and facts in the above and foregoing petition set forth are true, to the best of her knowledge, information, and belief.

MARTHA E. BOBB.

Subscribed and sworn to before me this 10th day of October, A. D. 1890.

ENRIQUE PARMER,
[SEAL.] *Notary Public, City St. Louis, Mo.*

Term ex. June 28, '93.

And afterwards, to wit, on the 15th day of December, 1890, the court met pursuant to adjournment, all the judges present except Black, J., and the following order was made:

Now, at this day, it is ordered by the court that there be assigned to division No. 2 the following civil cases on the January call, to wit, beginning with case 4819, on p. 19 of the 13th day of the October docket, and ending on p. 29 of the 20th day of October call, the last case being 4918; and it is further ordered by the court that all criminal cases heretofore submitted, but not determined prior to January 1, 1891, be transferred to division No. 2 of this court, and that said causes be called and determined by that division, beginning the call on Tuesday, January 6, 1891. Division No. 1 of this court will resume its call of the docket on the first Monday of February, 1891, beginning with case No. 4919, on p. 30 of the October docket. All civil cases heretofore set down for rehearing or reargument shall be heard and determined by division No. 1 of this court, and such cases shall be placed upon the first day of the said February call.

And afterwards, to wit, on the same day of said term, the
362 following further proceedings were had in said cause, to wit:

D. A. JAMISON, Adm'r, Resp.,
vs.
H. C. BAGOT *et al.*, App.

Now, at this day, the court, having fully considered and understood the petition heretofore filed to withdraw the transcript in this cause and to amend the same, doth order that said petition be, and the same is hereby, granted.

And afterwards, to wit, on the 5th day of January, 1891, the following appears of record, to wit:

In the Supreme Court.

Present: Judges Sherwood, Black, Brace, Barclay, Gantt, Macfarlane, and Thomas.

Ordered, that it is the sense of the present judges of this court that the judge oldest in commission for the time being shall be chief justice, and in accordance therewith Hon. Thos. A. Sherwood be, and hereby is, elected chief justice of the supreme court of Missouri.

And afterwards, to wit, on the 11th day of February, 1891, the following order was made in this court, to wit:

In the Supreme Court.

Present: Judges Sherwood, Gantt, Macfarlane, and Thomas.
Absent: Judges Black, Brace, and Barclay.

363 Ordered by the court that 100 cases be set for division No. 2 of this court for next April term; 10 cases to be set for each day; 50 cases to be set for first call, beginning Wednesday, April 22, 1891.

In the Supreme Court of Missouri, Division No. 2.

Ordered that it is the sense of the present judges of division No. 2 of this court that the judge oldest in commission for the time being shall be presiding judge, and in accordance therewith Hon. James B. Gantt be, and hereby is, elected presiding judge of division No. 2 of the supreme court of Missouri.

And afterwards, to wit, on the 24th day of April, 1891, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri, Division No. 2.

All the judges present.

D. A. JAMISON, Adm'r, Resp.,
v.
H. C. BAGOT *et al.*, App.

Come now the said parties, by attorneys, and, after argument herein, submit this cause to the court.

And afterwards, to wit, on the 2nd day of June, 1891, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri, Division No. 2.

All the judges present.

364 DORSEY A. JAMISON, as Administrator *de bonis non* of Charles L. Bobb, Deceased, and John H. Bobb, Respondents,
vs.
HENRY C. BAGOT, LOUISA LETCHER, Widow and Administratrix of John Letcher, Deceased; William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb and Martha E. Bobb, Appellants.
Appeal from Circuit Court, City of St. Louis.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by the said circuit court of the city of St. Louis rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said respondents recover against the said appellants their costs and charges herein expended and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

365 In the Supreme Court of Missouri, April Term, 1891, Division No. 2.

D. A. JAMISON, Administrator, &c., and Others, Respondent-,
v.
HENRY C. BAGGOT *et al.*, Appellant-.

The petition in this case is in the nature of a creditor's bill, and it seeks to set aside and cancel certain conveyances mentioned therein and to subject the land described in them situated in the

city of St. Louis to the payment of a judgment in favor of plaintiffs against Charles Bobb, one of the defendants, for the sum of $82,185.16 rendered June 15, 1878.

In substance the petition avers that the debt for which said judgment was rendered by the circuit court of the city of St. Louis occurred during the years 1843 to 1869, inclusive; that John S. Miller held a deed of trust on the lands described, dated the 23d day of September, 1865, for $8,000 principal; that defendant Charles Bobb bought this deed of trust some time after its execution; that on the 6th day of February, 1879, said Charles Bobb caused the land described in this deed of trust and which is the land involved in this suit, consisting of two tracts, to be sold by the trustee named in the deed of trust, and at the sale said Charles Bobb had Henry C. Baggott, who is also made a defendant herein, to buy said land and take a deed to himself therefor; that no money was paid for the bid made at this sale, and that said Charles Bobb had the title placed in said Baggott for his own benefit, said Baggot not having any beneficial interest therein nor having paid anything for it; that Baggot, at the instance and request of said Charles Bobb, conveyed said land to John Letcher without consideration, but that the latter had not then placed his deed on record.

The petition then avers that the said defendant, Charles
366 Bobb, so caused said real estate to be conveyed first to said Bagot and afterwards to said Letcher, and also caused said conveyance to be withheld from record with the fraudulent purpose and design of hindering and delaying the said creditors, and to prevent said property from being subjected to the payment of said judgment; that neither said Bagot or said Letcher have or ever had an interest in said property, nor have they or either of them ever paid anything therefor.

But said property in fact belongs to said defendant, Charles Bobb, who has caused the title therefor to be placed successively in said Bagot and Letcher with the fraudulent design aforesaid; that the defendant Martha E. Bobb is the wife of the defendant Charles Bobb; that, as plaintiffs are informed and believe and therefore state, the said defendant, Martha E. Bobb, now claims and asserts that she is in truth and in fact the owner of the real estate hereinbefore described, and that she was in truth and in fact the owner of the notes secured by deed of trust under which said real estate was sold as hereinbefore set forth, and that the said real estate was brought in for her, and that she is now the equitable owner of the same, although said real estate now stands in the name of the said John Letcher.

Wherefore the plaintiffs make the said Martha E. Bobb a party defendant to this action; that nothing has ever been collected on said judgment excepting the sum of six dollars, and that as to the balance of said judgment returns of *nulla bona* have been made on the executions issued thereon to the sheriff of the said city of St. Louis. Wherefore the plaintiffs pray the court that said real estate be decreed to be the property of defendant Charles Bobb, and as such to be sub-

ject to the lien of said judgments and decree so rendered as
367 aforesaid against said Charles Bobb and in favor of John H. Bobb and Lucy G. Taylor and the said estate of the said Charles L. Bobb, and that said real estate be decreed to be sold as the property of said Charles Bobb in order that the same may be applied as far as it will go towards the payment of said judgments, and for such other and further relief as to the court may seem meet and as in equity belongs.

This petition was filed April 14, 1881. Defendants filed a general denial June 8, 1881. On the 15th day of October, 1887, defendant Martha E. Bobb, who alone actively defended the suit in the court below, filed her separate answer to the petition as follows: "Now comes the defendant Martha E. Bobb and by leave of court files this her separate answer to plaintiffs' petition and admits that she does claim the property described in plaintiffs' petition and says that she is the true and sole owner thereof, and that neither defendants Bagot nor Letcher ever had any beneficial interest in said property, but merely held the legal title for short periods as trustees of and for the sole use and benefit of this defendant, and this defendant states that she has no knowledge or information sufficient to form a belief as to the truth of the facts stated in said petition." Upon the issues thus made the case came on for trial and was determined. The plaintiff offered documentary evidence, whereupon defendant Martha E. Bobb objected to the introduction of any evidence against her, because no allegations sufficient to charge her property were made in the petition. The court overruled the objection, and defendant Martha E. Bobb excepted to the ruling. And this presents the first question for decision. Defendants' counsel contend that on the trial the plaintiffs abandoned the case stated in the petition and without warning sprung a new case of fraud affecting Mrs. Bobb's title to the property which was not alluded to in his petition,
368 based on an entirely new theory. We do not concur in this view of the issues tendered by the petition. The averment is that Charles Bobb bought the land and paid for it and had the title placed in Baggott and Letcher for the purpose of hindering and delaying his creditors and to prevent the property from being subjected to the payment of the judgment in favor of plaintiffs, and then adds that plaintiffs are informed and believe and so state that Martha E. Bobb claims to be the equitable owner of the property and to have paid for it, although the title stood in John Letcher, and it is prayed that she be made a party defendant.

It is conceded in the argument that the allegations of the petition make out a good case against Baggot and Letcher, but, as there are no allegations that Mrs. Bobb was guilty of any fraud, it was error, it is claimed, to admit evidence affecting her title. This argument proceeds upon the theory that the pleadings admit the title to the property in controversy to be in Mrs. Bobb. This is an error. The petition positively asserts that the legal title is in John Letcher and it was put there by Charles Bobb to cover up the property from his creditors. Mrs. Bobb, it is alleged, claims she was the owner of the property in equity and had paid for it. This claim of hers which

is alleged in the petition cannot be held to nullify the previous statements of the petition that Charles Bobb was in fact the owner of the property, had paid for it, and had it conveyed to Letcher to defraud his creditors. Take the petition altogether, there is but one conclusion that can fairly be reached and that is that whatever claim to the property Mrs. Bobb might interpose was subject to the conditions on which Letcher held it. When the trial began the court did not know and could not know from the pleadings where the legal title to the property was. Plaintiffs alleged it to be in Letcher, while Mrs. Bobb set up that she had it. The evidence showed that Letcher conveyed the property to Mrs. Bobb by
369 deed dated May 1 and acknowledged May 17, 1881, and recorded March 16, 1882; hence at the time the petition was filed Letcher did hold the legal title. It is insisted, however, that when the deed vesting the title in her was recorded several years prior to the trial and Mrs. Bobb disclosed in her answer filed in 1887 that she was clothed with the legal title to the property plaintiffs ought to have amended their petition so as to conform to the facts occurring subsequent to the institution of the action. Plaintiffs could have done this, but we know of no rule of pleading, either in a court of equity or a court of law, requiring them to do it. If the occurrences subsequent to the institution of the suit were favorable to Mrs. Bobb, it was her duty to set them up and plead them as a defence to the action. The plaintiffs stood and had a right to stand upon the facts as they existed at the time they filed their petition.

The case of Reed *v.* Bott, 100 Mo., 62, mainly relied on by defendants to support their contention, we do not regard as in point. There it was averred that John A. Bott bought the property, paid for it, and had it conveyed to his wife to defraud his creditors, while the evidence showed that John Bott, John A. Bott's father, bought the property, which was conveyed to the wife of the latter, and it was held that there was a fatal variance in the proof from the allegations of the petition. The court says, "The land was purchased and paid for by John Bott. If there is any fraud in the case, it is in the transaction by which the land was acquired from John Bott and in the methods by which payments were made to him. This transaction is not set up in the petition at all. The petition is so framed as to exclude the idea that there ever was such a transaction." There the plaintiff proved a case not alleged; here the plaintiff proved or tried to prove the identical facts averred in the petition, viz:
370 1, that Charles Bobb did pay for the land; 2, that Letcher held the legal title to it; 3, that Baggot and Letcher paid nothing for it; 4, that the title was placed first in Baggot and subsequently in Letcher to defraud creditors, and, 5, that Bobb was insolvent. The two cases are not parallel in any respect.

2. The next point made for a reversal of the decree in this case is that the court erred in the admission of evidence, and in order that this point may be fairly understood it becomes necessary to give a résumé of the issues presented and of the facts as developed

on the trial. It appeared that Miller did hold the deed of trust for $8,000, mentioned in the petition dated September 23rd, 1865, and that Mrs. Bobb claimed to have furnished the money to buy it, and that she was, in fact, the owener of it, and, as that was the sole consideration of the deed of the trustee to Baggot in 1879, she was in equity entitled to the property. It was conceded by all parties that Baggot and Letcher never paid anything for the property and never pretended to own it. It is true Letcher did hold the property for a time to secure him as surety on an appeal bond, but he did not have anything to pay on that bond, and he thereafter set up no claim to it. Baggot and he then simply held the title for the party who was the beneficial owner, the sole issue being whether Charles Bobb or his wife furnished the money to buy the Miller deed of trust. This purchase was made in 1875. On the trial plaintiffs offered in evidence the whole record, including the pleadings, the referee's report, and the interlocutory and final decrees, in the case of John H. Bobb *vs.* Charles Bobb *et al.*, No. 13809, in the circuit court of the city of St. Louis. The petition in this latter action was filed September 9, 1869, and its object was to compel Charles Bobb, as trustee, to account for certain monies it was charged he had received for plaintiff and his brother, Charles L. Bobb, and his
371 sister, Lucy G. Taylor; the latter two being made defendants. It is alleged that the trust began in 1843 and had been continued to the time of the commencement of that action. The court thereupon enjoined Charles Bobb from interfering with the trust funds. Charles Bobb filed answer and made vigorous resistance in the case, but on the 4th day of November, 1871, the court upon a trial entered an interlocutory decree in favor of plaintiff, finding the issues for him as presented by his petition, and appointed a referee to take an account and report. The case dragged along until June 15, 1878, when a final decree was entered. This decree is quite lengthy and sets out in full the findings of the court, which are to the effect that Charles Bobb had been the trustee of plaintiff, his brother and sister, from January 23, 1845, up to the institution of this suit, and as such received into his hands large sums of money belonging to the beneficiaries during the period of his trusteeship, some having been received soon after the creation of the trust in 1845. These sums were found to amount, with interest, at the time of the decree to $82,185.16. The issues were so framed that the court granted Charles L. Bobb and Lucy G. Taylor affirmative relief, and judgment was rendered against Charles Bobb in favor of plaintiff for $27,538.83, in favor of Charles L. Bobb for $18,382.59, and the court found that there was due from Charles Bobb the sum of $36,263.83 to Lucy G. Taylor, and that she had since the institution of the suit assigned her claim to the plaintiff and the judgment was in his favor for that sum. These three sums make up the total of $82,185.16 as above stated. Now, when this record was offered in evidence Mrs. Bobb objected to it "as incompetent and irrelevant and as being of a suit to which she was not a party." The court excluded the report of the referee but admitted in evidence the petition, the answers, and the interloc-
372 utory and final decrees and exceptions were duly saved. There

was no evidence introduced showing that any indebtedness of Charles Bobb to John H. and Charles L. Bobb and Lucy G. Taylor existed prior to 1862 except this record. Defendants' counsel concede now that the final decree was admissible in evidence to prove the existence of the debt of Charles Bobb. Indeed it cannot be controverted, for the authorities are uniform in support of this principle. Waite on Fraud Con. & Cred. Bills, 2 Ed., s. 270; Bump Fraud. Con., pp. 575, '6.

But it is contended with much earnestness that the petition, interlocutory and final decrees, as well as the answers of the defendants in that case, were not admissable as evidence in this case of the existence of Charles Bobb's indebtedness prior to the rendition of the judgment on the ground that these as to that issue are *res inter alios acta.*

According to the issues presented it was incumbent on plaintiffs to prove the fraud alleged, and in order to do this it was important they should show that Charles Bobb was indebted at the time it is alleged he conceived as well as at the time he consummated the fraud. To be entitled to the relief they sought it was necessary for them to prove two ultimate facts: 1. That Charles Bobb perpetrated the fraud and, 2, that Martha E. Bobb was affected by the fraud, either because she was not a *bona fide* purchaser of the property or because she had notice of or participated in it. These two propositions embraced the whole scope of the inquiry. Plaintiffs' counsel contend that it being conceded to be established law that the judgment is admissible for some purposes, the objection made in the court below that this evidence was incompetent and irrelevant and as being of a suit to which Mrs. Bobb was not party was not broad and specific enough to embrace the objection urged in this court.

This is the correct view unquestionably, so far as the judg-
373 ment itself is concerned, as we will see hereafter. But the plaintiffs includedi n their offer to read, and did read, in evidence over the objection of defendants the petition, answers of defendants, and the interlocutory and final decrees in the case named. The record shows that plaintiffs offered all these at the same time and the objection went to all of them. It now appears and it is now conceded that the final decree was admissible in evidence to show the existence of the indebtedness of Charles Bobb to these plaintiffs at the time of the entering of the decree. The petition, answers, and interlocutory decree could have been introduced for but one purpose only, and that was to establish the indebtedness at a period prior to the date of the final decree. If the position assumed by appellants be correct, that these were not admissible for any purpose, then their objection that they were "incompetent and irrelevant as being of a suit to which Mrs. Bobb was not a party" was broad and specific enough. As the court excluded the referee's report which was included in the general offer of the other documents, and as the final decree had been previously read in evidence, we may presume that the trial court understood the objection as going to each document offered and acted accordingly, and in the consideration of the question we will assume that it is before us on the specific objection

now presented, *i. e.*, that these documents were not admissible in evidence to establish the indebtedness of Charles Bobb at a period prior to the date of the final decree.

As stated before, that objection proceeds upon the ground that these documents constitute as to Mrs. Bobb *res inter alios acta*, and on that ground are incompetent to prove the issue which it is claimed they do prove and which they must have been offered to prove. While some authorities announce the doctrine contended for by defendants (Snodgrass *v.* Bank, 25 Ala., 179, and Dooley
374 *v.* McKinan, 62 Ala., 35), yet it does not seem very logical to hold that the pleadings and judgment in a cause cannot be read in evidence against a stranger to the record to establish the indebtedness for which the judgment was rendered prior to its rendition, because as to him they constitute *res inter alios acta* and at the same time hold that these are admissible in such case to prove an indebtedness at the time the judgment was rendered. It seems on principle that if a stranger to the record is not bound by the judgment in one case he ought not to be in the other. The indebtedness of Charles Bobb at the time of the inception of the alleged fraudulent transactions is an issue in the cause and both parties concede its importance. It devolved on plaintiff to prove it. How shall he prove it? There is only one way for him to do it and that is to introduce evidence of *res inter alios acta*.

The plaintiffs charge the fraud was conceived by Bobb in 1875 and consummated in 1879. The documents under review in our opinion were as a part of the *res gestæ* clearly admissible to prove the issue of fraud made in the case. The fact of the commencement of the suit, the fact of the entering of the interlocutory decree, and the fact of the pendency of the controversy at the time of the inception and progress of the alleged fraudulent transactions were all important facts and all clearly provable by this record. Not only that, but it was important for plaintiffs to prove the nature and magnitude of the claim then made against Bobb and its judicial status as calculated to influence and characterize his conduct.

In order to understand the true inwardness of the purchase of the Miller deed of trust in October, 1875, we must view the transaction from the standpoint of Bobb and his wife. At that time we find John H. Bobb had a suit pending against Charles Bobb in
375 which it was alleged he was indebted to certain beneficiaries in the sum of $400,000. A decree had been entered finding the issues against Charles Bobb and a referee then had the matter under investigation.

It seems clear, therefore, that these documents were admissible in evidence for some purposes at least, and hence the court committed no error in overruling the objection make that they were "incompetent and irrelevant as being of a suit" to which Mrs. Bobb was not a party. We feel satisfied that both upon principle and authority these documents in connection with the final decree were competent to prove, 1, that Charles Bobb was indebted not only at the time of the rendition of the final decree, but also at the time of the institution of the suit—the court must take notice that the

judgment was for the claim set out and alleged in the petition and that it must have been in existence at the commencement of the action; 2, that the action was begun September 9, 1869; 3, that the interlocutory decree was entered November 4, 1871, and that the suit was pending from 1869 to June 15, 1878; 4, that certain facts were alleged and a certain demand made against Charles Bobb as well as the amount claimed. This far we have no doubt, but plaintiffs go farther in their contention and claim that these documents not only prove the pendency of the suit, and that certain facts were alleged to exist, but also that the facts alleged did exist. These documents were offered as evidence generally. If defendants had made the specific objection that they were not competent to prove the facts alleged in them it seems that by the generally recognized rule they ought not to have been admitted for that purpose. Vogt *v.* Ticknor, 48 N. H., 242; Snodgrass *v.* Bank, 25 Ala., 178; Nichols *v.* Wodsworth, 40 Minn., 549; Dooley *v.* McKinan, 62 Ala., 35; Bump Fraud. Con., 574–5, and cases cited; Wood on Cred. Bills, ss. 74 & 270.

376 In some jurisdictions, however, it has been held that the whole record in a case may be looked to to see when the indebtedness involved and for which judgment was rendered first accrued. Hindes' Lessee *v.* Loryworth, 11 Wheat., 209; Goodnow *v.* Smith, 97 Mass., 68.

But the objection made to the introduction of this evidence being general and the evidence being admissible for some purposes, the question is, can parties be heard now to urge the specific objection that it was not admissible to prove the existence of Bobb's indebtedness prior to 1869? We hold they cannot. It is evident this objection in this case is a technical one. It took the parties nine years to litigate this indebtedness, and it was found after a most stubborn and prolonged resistance on the part of Charles Bobb that it had accrued from 1843 to 1869, and it can scarcely be conceived that any of the parties had any desire to go over the same ground again. It cannot be maintained that the judgment against Bobb was procured by his collusion. As to him it is certain, the rendition of that judgment was *in invitum*. Here the defendants interposed the objection that this evidence was "incompetent and irrelevant and as being of a suit to which Mrs. Bobb was not a party." The evidence is found to be competent and relevant for some purposes, notwithstanding it constituted *res inter alios acta* and to admit an inquiry in this court whether the evidence might not have been admissible for other purposes would be sanctioning a course of practice calculated to mislead." Hindes' Lessee *v.* Longworth, 11 Wheat., *supra*; Dunkham *v.* R'y Co., 95 Mo., 232; Black *v.* Estee, 92 Mo., 318, & cases cited; Russell *v.* Glassee, 93 Mo., 353; Blackenstone *v.* R'y Co., 23 Mo. App., 148; Dunham *v.* Simmons, 3 Hill, N. Y., 610; Whitesides *v.* Jackson, 1 Wend., 418; Norman *v.* Wells, 17 Wend., 142; Gievand *v.* R'y Co., 33 M. A., 465.

But, as will appear later on, the view we take of the alleged
377 fraudulent transaction, having its inception in 1875 in the

purchase of the Miller deed of trust, makes it unnecessary to look to these documents to prove any fact prior to 1869.

378 3. Defendants contend, in the third place, that as John H. Bobb, the present plaintiff, wrote the deed by which Charles Bobb conveyed what is known as the Hayden place to Martha E. Bobb's trustee in 1861, he cannot attack it now. He does not seek directly to attack it. The fraudulent transaction attacked here originated in October, 1875, and the consideration of the deed of 1861 comes in issue only collaterally and incidentally. It is true John H. Bobb did write the deed, and he now claims that it was without valuable consideration. In fact the expressed consideration of the deed is $5, and hence we can see no recital in the deed that would estop plaintiffs from asserting that there was no other consideration than the $5, or even that the five dollars was not paid. Mrs. Bobb claims she derived the money which she paid for the Miller deed of trust from the land conveyed by the deed of 1861, and plaintiffs had a right to show, if they could, that it was a voluntary conveyance on the part of Bobb, made in fraud of creditors at a time when he was in debt heavily. The case of Bobb *v.* Bobb, 99 Mo., 518, cited by defendants in support of this contention now under discussion, is not similar to this in any of its features.

4. The court committed no error in permitting plaintiff- to introduce evidence to overthrow the evidence given by Mrs. Bobb. Plaintiff- did not not make Mrs. Bobb their witness by introducing in evidence her deposition taken in another proceeding. The deposition was admissible against her as an admission, and certainly there is no rule of law that would preclude plaintiffs from introducing other admissions of hers contradicting those contained in the deposition. Besides that, while the statements which Mrs. Taylor testifies Mrs. Bobb made to her tend to contradict what she said in the deposition read by plaintiffs, yet they were admissible as

379 primary evidence against her as a party to the suit, and for that reason there was no error in admitting them.

5. This brings us to a consideration of the issues of fact presented by this record. The trial court, in substance, found that the indebtedness of Charles Bobb, for which the judgment of June 15, 1876, was rendered against him, begun to accrue in 1845, and from time to time continually increased until at the time of the rendition of said judgment it amounted to the sums adjudged against him; that Charles Bobb bought and paid for the Miller deed of trust, amounting to $8,000; that said Charles Bobb caused the land described in that deed of trust, which is the same involved in this suit, to be sold by the trustee, at which sale he bought the property through defendant Henry C. Bagot, acting as his agent, for the sum of $4,000, which sum was not paid, but was credited on the note secured by the deed of trust, in pursuance of which sale the trustee, at the instance and by the direction of Charles Bobb, executed a deed to said property to said Bagot, dated February 6, 1879; that Charles Bobb caused said Baggot to convey by deed, dated July 18, 1879, the said property to defendant John Letcher without consideration, and that Letcher took the property in trust for said Charles

Bobb; that the title to this property was put in Baggot and Letcher by said Charles —— to defraud his creditors and to prevent said property from being subjected to the payment of said judgment; that after the institution of this suit said Charles Bobb caused said Letcher to convey the same property to his wife, Martha E. Bobb, without consideration, and that this deed was also made to defraud the creditors of Charles Bobb and was made to hinder and delay plaintiffs in the collection of their judgment, and that the property in fact belonged to Charles Bobb. Upon this finding the court ordered a sale of the property to pay the judgment. Is this finding supported by the evidence? is the question pre-
380 sented for decision. The record is quite voluminous and many collateral and incidental questions have been discussed by counsel, but the question may be simplified by stating the ultimate fact to be found which controlled the ruling of the trial court and which must control us. There is no dispute that the Miller deed of trust amounted to $8,000, and that it was purchased in October, 1875, either by Charles Bobb or his wife, and that this deed of trust constitutes the sole consideration of the purchase of the property involved in this controversy. It was assumed in the argument by both parties, and we think the assumption warranted by the record, that Charles Bobb's financial condition and the circumstances that environed him in 1875 were such that if he furnished the money to purchase the said deed of trust the judgment of the lower court must be upheld. Hence the simple question is presented for determination, Did Charles Bobb furnish the purchase-money of the said deed of trust or did his wife furnish it? If he furnished it, the decree in the case must be affirmed; if she furnished it, it will have to be reversed. The counsel for Mrs. Bobb present one theory growing out of the evidence and plaintiff's counsel present another. In support of the former theory it is argued that the evidence shows that Mrs. Bobb, when she married Charles Bobb, in 1856, owned in her own right between $2,500 and $2,800, which she delivered to her husband, to be invested by him for her; that in 1857 he loaned $2,551 of this money of his wife on what is known in the history of the case as the "Hayden property;" that in 1859 the money was not paid and the property was sold under the deed of trust taken to secure the loan and was purchased by Charles Bobb in his own name; that he held this property for his wife until November 4, 1861, when he conveyed it to a trustee for the sole and separate use of his wife in considera-
381 tion of the money he had loaned for her; that on May 17, 1867, this property, the "Hayden" place, was sold for $13,000, part cash and part on credit; that Charles Bobb received the most of this money into his hands to invest, and which he did invest for her to great advantage, so that in 1875 she had a handsome income arising from the rents of the property purchased with it and interest on loans made out of it, and that she used this income to pay for the Miller deed of trust. Some of the facts on which this theory is based are undisputed. Charles Bobb did convey the Hayden place to Mrs. Bobb's trustee on November 4, 1861. The Hayden

place was sold May 17, 1867, for $13,000, one-third cash, balance in one and two years, the deferred payments bearing six per cent. interest per annum. The alleged fact that Mrs. Bobb had the money she claimed at the time of her marriage with Charles Bobb, in 1856, and that Bobb received it to invest for her is disputed and rests solely on Mrs. Bobb's own evidence. If this theory of Mrs. Bobb's counsel is supported by the evidence she has a good case and the ruling ought to be for her. Against this theory plaintiffs present an opposing one. It is this: That Mrs. Bobb had no money when she married Charles Bobb, in 1856; that the deed of November 4, 1861, to Mrs. Bobb's trustee was void as in fraud of the demand of plaintiffs, which they claim existed at that time and was made to defraud plaintiffs; that there was a deed of trust on the "Hayden" property prior to the loan of $2,551, in 1857, this prior deed of trust amounting to the sum of $4,372.74; that this prior deed of trust was bought and paid for by Charles Bobb, and that he never intended by his deed of November 4, 1861, or otherwise to give this deed of trust to his wife, so that when the "Hayden" place was sold, in 1867, for $13,000 he was entitled to receive payment and did receive payment out of the proceeds; that at most Mrs. Bobb was not entitled to receive and did not receive
382 more than her proportionate share, to be ascertained by taking the principal and interest of said prior deed of trust out of the $13,000 and giving her the balance, even if she was entitled to receive anything; that after the institution of the original suit, in 1869, of John H. Bobb against Charles Bobb and others Charles Bobb commenced a systematic course to put his property out of his hands to avoid any judgment that might be rendered against him thereon, and that the pretense that his wife furnished the $8,000 in October, 1875, to purchase the Miller deed of trust was a part of this scheme, and that he used his wife's name to cover his tracks in the transaction. A part of the facts on which this theory is based are not disputed. There was a prior deed of trust on the "Hayden" property for the sum of $4,372.74, dated October 25, 1855; this prior deed of trust was entered satisfied on the margin of the record by Charles Bobb, assignee, on the 15th day of May, 1867, the day this property was sold for $13,000. The loan of $2,551 on the "Hayden" property in 1857 was made in the name of Charles Bobb. When the "Hayden" place was sold for $13,000, $4,333.33 of the purchase-money was paid in cash and the balance, $8,666.66, was divided into two equal installments of $4,333.33, for which notes were given, secured by deed of trust on the property, one payable in one and the other in two years after May 17, 1867, each bearing six per cent. interest per annum. On the 17th day of May, 1870, Charles Bobb, as assignee of these two notes, entered satisfaction of the deed of trust. Prior to 1870 Charles Bobb had large property, from which he derived a handsome income. To rebut defendants' theory they called Lucy G. Taylor, who testified that Mrs. Bobb told her she had nothing when she married Charles Bobb, in 1856. Mrs. Bobb in her testimony claimed that
383 she obtained the money that went into the loan of $2,551 in

1857 on the "Hayden" place from her former husband's and from her father's estates. She admitted her mother was still living at the time of the trial, and it is contended by plaintiffs that the fact that she did not call as witnesses her mother, who must have known what her father left her, and her husband, who acted as her agent in the loan of this money from 1857 to 1875, tends strongly to prove that her story about her means was fabricated. These are the two opposing theories of this case. We do not deem it necessary nor do we think any good purpose would be subserved to review at length the arguments presented in their support by the attorneys for the respective parties. We will briefly refer to them, however. We will say right here that, the finding of the lower court being simply that Charles Bobb did and his wife did not furnish the purchase-money of the Miller deed of trust, we do not know what view that court took of the issue made as to the means Mrs. Bobb had in 1856 and the *bona fides* of the deed of November 4, 1861, of Charles Bobb to his wife. Suffice it to say that it is fairly a debatable question whether Mrs. Bobb did have any money when she married Charles Bobb or not, and if the lower court did in fact find that she did not have any we do not feel that under the evidence it would be our province to interfere with the finding. As to the *bona fides* of the deed of November, 1861, we will say that we think the evidence shows that at that time Charles Bobb was in debt to these plaintiffs in a sum in excess of the value of his visible property, but whether that deed was made to secure to Mrs. Bobb her separate money which she placed in her husband's hands for investment or whether it was a gift by way of settlement to her we think the weight of the evidence is that Charles Bobb did not intend by that deed to defraud any creditor. In other words, that was a *bona fide* transaction no matter in what light it is
384 viewed. If it was a voluntary conveyance made by Charles Bobb when embarrassed by debts, and it was not a reasonable provision for his wife, having respect to what he then owned and owed, it might be held fraudulent as to the then existing creditors, whether actual fraud was intended or not. On this issue again we do not know what the finding of the lower court was and we will leave it without further discussion. This clears the deck, then, of all questions arising prior to May 15, 1867. That day $13,000 was realized by the sale of the "Hayden" place. Here again we have two distinct theories as to what became of that money. Defendants contend that the whole of it was invested in loans and real estate for Mrs. Bobb, while, on the other hand, it is insisted by plaintiffs, 1, that none of it ought to have been or was invested for her, and, 2, that at best she was only entitled to a share of it in the proportion of $2,551 to $4,372.74. This last contention alone we will discuss. There is no evidence whatever as to when Charles Bobb became the assignee of the deed of trust on the "Hayden" property for $4,372.74, dated in 1855. One single fact alone appears in the record in regard to it, and that is on May 15, 1867, the day the property was sold, Charles Bobb, as assignee of this prior deed of trust, entered satisfaction of it. Eight thousand six hundred and sixty-six $\frac{66}{100}$ —

was not paid, but notes given running one and two years, with interest at six per cent. per annum; May 17, 1870, Charles Bobb, as assignee of these deferred payments, enters satisfaction on the deed of trust given to secure them. We therefore think it probable that when the "Hayden" place was sold, in 1867, Charles Bobb took the notes given for the deferred payments to reimburse him for his outlay for the deed of trust of 1855, and that in good faith he intended his wife should have the remainder. In 1867 there is no
385 evidence that Charles Bobb felt he was embarrassed and there seems to have been no motive for him at that time to cover up his property. This would place to Mrs. Bobb's credit May 15, 1867, the sum of $4,333.33. We hear nothing of this sum, however, for three or four years, except some indefinite statements of Mrs. Bobb that her husband invested it for her, but she is utterly unable to give a single instance of a loan made for her. We will not discuss the question whether this sum, no matter how advantageously it may have been invested, could have produced an income sufficient to enable Mrs. Bobb in 1875 to invest $8,000 in the Miller deed of trust. We will dispose of this question by conceding that the whole $13,000 belonged to her and inquiring whether the investment of that sum enabled her to buy the Miller deed of trust. We will remark here that Mrs. Bobb does not claim that she invested any of the principal in the Miller deed of trust, but that she paid for it solely out of the interest on loans and the rents of her property, and she also concedes that all she possessed in 1875 was derived from the proceeds of the sale of the "Hayden" property. She had $4,333.33 cash, then, on this assumption May 15, 1867. The other $8,666.66 drew six per cent. interest. Suppose that the $4,333.33 was invested so that it yielded six per cent. net, and this is probably more than was in fact realized out of it after paying taxes, then she would on May 15, 1870, have had of this sum $5,113.33, principal and interest. On the remainder of the $13,000 she would have had May 15, 1870, principal and interest, the sum of $10,256.99. The evidence shows that in May, 1871, M. A. Wolf collected rents for her from real estate she owned then; that in 1872 she bought one piece of property for $10,000 and several other properties prior to 1875, but how much she paid for them is not shown. In 1875, however, before the purchase of the Miller deed of trust, she bought a piece of property from Charles Bobb for $3,000. It is very clear from the evidence that there had been invested in
386 real estate in her name prior to October, 1875, more than twice as much money as could have been reasonably realized out of the $13,000, and we are satisfied that she could not have had any money on hand or loaned at that time derived from her own means. It is claimed that the evidence does not show that she paid her husband the $8,000 for the land she got of him. In the absence of proof we must presume that what he conveyed to her at that period was to pay her for the money he had of hers, for she says he had all of it as her agent. We feel satisfied also that Charles Bobb transacted his business in 1875 in the name of his wife to cover up his property from his creditors and from the following considera-

tions. Though Mrs. Bobb claims her husband got over $2,500 in 1856 and $4,333.33 in 1867 and over $10,000 in 1870 of her money, yet no trace of it in bank or notes can be found till August 3, 1875, and then in three months and a half from August 3 to November 30, 1875, she has in bank of her own money, outside of monies arising from discounts, the sum of $20,318.50, and from August 3, 1875, to August 2, 1877, two years, she had in bank of her own money $46,000 and over. This is her own showing of her bank account kept in her name, but the circumstances show that Charles Bobb furnished the money. She says she did not have enough money on hand to pay for the Miller deed of trust and she had to discount a note of $4,000 to raise the necessary amount. The bank account of hers introduced in evidence shows she did discount a note of $4,000 October 18th, 1875, and she says she paid for the Miller deed of trust with $2,000 in cash, not in bank, and by two checks for $3,000 each, one dated October 22 and the other November 4, 1875. On October 18, when the note was discounted, she had in bank nearly $5,000; on October 19 there was deposited to her credit $3,000; on October 21 she is credited with another deposit of $1,300, and on the 22d day of Octo-
387 ber, the day she drew the first check of $3,000, and four days after the note of $4,000 was discounted, there was another deposit of $1,720, so that on the day she drew the first check to pay for the Miller deed of trust she had in bank $11,020.20 besides the sum realized from the discounted note, and with that she had in bank $14,989.80. Add the $2,000 cash which she says she carried with her to the bank and we have the sum of $16,989.80, which she then had. On October 27th $300 and on November 4 $5,000 are deposited to her credit, so that the day she drew the last check to pay for the Miller deed of trust she had in bank, not deducting the first check of $3,000, the sum of $22,189.90, or, deducting the discount, she had $18,220. She says all the money she had to pay for the Miller deed of trust was derived from interest on loans and the rents of her property, and the inference is that this sum of $18,220 was derived from the same source. This is her story, and it is preposterous in the extreme. It was impossible for her income to have produced the sums she claimed it did. The bank account she produced was Charles Bobb's account in fact. She says the $4,000 note was discounted to enable her to buy the Miller deed of trust, whereas her bank account shows she had on hand more than twice as much as was paid for the Miller deed of trust. During the period from October 18 to November 20 her bank account shows she drew checks against it as follows: Oct. 21, $6,000; October 22, $3,600; October 27, $3,000; October 26, $2,000; November 20, $3,000. Supposing the two checks of $3,000 with which she is charged as of October 27 and November 20 are the two that paid for the Miller deed of trust, we have left checks aggregating $11,600 drawn against her account during that period, no explanation of which whatever is given. The cogent facts seem to point unerringly to the conclusion that Charles Bobb was doing business in his wife's name and the items of credit in her bank account were
388 furnished by him and not by her. We have shown that it is

not probable that she could have had the money to buy the Miller deed of trust; but let us see if Charles Bobb could have had it. The evidence shows that from 1862 to 1870 he was worth $100,000.00 outside of the trust property on account of which he became indebted to plaintiffs; that he derived a good income from his own property and $5,000 or $6,000 a year from the trust property from 1862 to 1870. His counsel shows that he owned in 1869 $47,000 worth of real estate. He met with no losses at any time. He never paid a cent on the debt he owed plaintiffs, which amounted in 1878 to the sum of $82,000 and over. Hence it is easy to see how he could have $20,000 deposited to his credit in the bank in three and a half months. We can very readily discover a motive for him to do business under cover of his wife's name in 1875. He was sued in 1869 for $400,000. He was removed as trustee from the management of the trust property. The court entered an interlocutory decree against him November, 1871, and from that time till 1878 a referee had the accounting under consideration. We find from 1869 to 1877 his property grows small by degrees and beautifully less, while that of his wife assumes magnificent proportions. His hand, like a magic wand, touches her $2,551, and, behold, a fortune grows out of it in a short time. The same hand touches his $100,000 in his own right and the large sum he held as trustee, and, lo and behold, it crumbles away and finally disappears entirely. Hence we conclude that the great weight of the evidence is in favor of the finding of the lower court that Mrs. Bobb did not, but that Charles Bobb did, pay for the Miller deed of trust, and that this was done to prevent plaintiffs from reaching the property. Besides that, the trial judge heard Mrs. Bobb testify, saw her manner upon
the witness stand, and, as she did not call her husband to
389 corroborate her, but submitted her case on her own testimony, *and* he is better qualified to judge of her credibility than this court. And, again, we ought to defer somewhat to the finding of the court below, even if the fact was in some degree in doubt as to how it ought to be decided.

Finding no error in the record, the judgment is affirmed. All of this division concur.

JOHN L. THOMAS, *J.*

390 And afterwards, to wit, on the 11th day of June, 1891, the following further proceedings were had in said cause, to wit:

D. A. JAMISON, Adm'r, &c., Resp.,
v.
H. C. BAGOT *et al.*, App.

Come now the said appellants, by attorney, and file their motions for a rehearing herein and to transfer this cause to the court in banc.

Which said motions are in words and figures as follows, to wit:

391 In the Supreme Court, April Term, 1891.

D. A. JAMISON and JOHN H. BOBB, Respondents,
vs.
HENRY C. BAGOT, MARTHA E. BOBB, *et al.*, Appellants.

Motion for a Rehearing.

Martha E. Bobb, an appellant herein, moves the supreme court to grant her a hearing and rehearing of this cause, for the reasons following:

I. Because a hearing of this cause has been had before the Hons. Judges Gantt, Thomas and Macfarlane, three of the seven judges of this honorable court, constituting "division number two" thereof and an opinion has been filed by said "division number two" in which vital facts set forth in the record and principles of law vital to the correct decision of this cause, and stated in this appellant's brief, have been overlooked and misconceived and thereby conclusions of law and fact adverse to this appellant and not in accordance with the record or the settled principles of law, applicable to this case, have been arrived at by said "division number two," and the judgment of the court below in consequence thereof, has been ordered to be affirmed to the great injury of this appellant: and those conclusions of law and fact are as follows, viz:

I. In their said opinion division number two of this court, hold that the case of Reed *vs.* Bott 100 Mo. 62, is not a parallel case as to the facts, to the case at bar and refuse to be governed by it or by the rule of law announced in it, in determining this case.

In doing so, division number two, as this appellant respectfully contends, overlook the plain facts in the record of this cause, and overlook the well-settled principle that the application of a principle of law to a cause depends only on the existence of the facts to which the principle applies.

In the case at bar, as in the case of Reed *vs.* Bott, both being in equity, it was sought to establish an alleged fraud not even hinted at in the pleadings. In the case of "Reed *vs.* Bott" the majority of the judges of this court, none of whom are members of division number two, held, coinciding with all the prior authorities of the English-speaking world that we could find, that evidence for that purpose could not be entertained against the objection of the party to be charged by it. Division number two say they can consider such evidence and do so, and in doing so, we submit, they overlook the authorities fully cited in our brief.

And on this point as a further reason for sustaining this motion, we submit that the principle of the rule in Reed *vs.* Bott, affects every part of this cause so that if this court were to follow it in this cause at bar, the judgment below cannot be affirmed. Even though the court might consider as division number two considered that, as the proof stands, the decision of the court below ought to be affirmed, if determined on that proof, yet inasmuch as that proof was a surprise on appellant sprung on her without notice, warning or charge, as we have fully shown in our briefs on file, it cannot be en-

tertained under the decision of "Reed *vs.* Bott" or under a proceeding with due process of law.

II. In the opinion rendered by division two of this court in this cause it is held in reference to the admission of the petition in the case 13809 of "John H. Bobb *vs.* Chas. Bobb *et al.*" to which this appellant was not a party, that this petition was properly admitted and properly held proof of the statement set forth in it as to the commencement of the indebtedness of Charles Bobb to plaintiff.

This ruling we submit breaks down the safeguards heretofore recognized as protecting the rights of the citizen in this; that
392 in that case an answer had been filed denying all the allegations of that petition; that even in that case the allegations of that petition thus denied would not be evidence or proof of anything therein alleged according to all rules of evidence hitherto recognized, and it is hard to understand how then those allegations can be evidence or proof of themselves as against a stranger, in this case. This view of the ruling in the case at bar has evidently been overlooked.

A careful examination of the cases cited by division number two in support of this position—*i. e.* Lessee *vs.* Longworth 11 Wheaton 209, and Goodnow *vs.* Smith 97 Mass. 68, both of which we note and examine in our brief, will show we submit that the point therein decided, in this connection, has been entirely overlooked by division number two. In the first case, as we pointed out, the documents were accounts filed and had been admitted without objection and in the second the court expressly decided that the judgment recitals could not be used as proof of the time the indebtedness accrued and the admissibility of pleadings was not touched on. We respectfully submit that no case can be found sustaining the decision of division number two, in this case, on this point.

III. In the opinion of division number two in this case at bar, in treating of our contention that John H. Bobb was estopped from questioning the Hayden deed, on the authority of "Bobb *vs.* Bobb" 99 Mo. 518, it is stated that the latter case "is not similar to this in any of its features." With respect to this we have most respectfully to submit that the court must, inadvertently, have examined some other case than the one we cited, and that in the case we referred to, it is certainly and plainly held that John H. Bobb, by participating in the execution of the alleged fraudulent conveyance, with knowledge of the facts, estopped himself from afterwards questioning its validity: and we submit that such is the universally accepted rule.

4. We submit, that, in the consideration of the facts of the cause, by division number two, the difficulty is overlooked, that the facts considered are the facts or evidence contended to have been adduced in support of charges not made in the petition, and which the appellant was, therefore, not prepared to meet, nor could she be expected to meet them in a satisfactory way, relying, as she did, on the rule declared in "Reed *vs.* Bott, 100 Mo.," and the authorities without exception: that this appellant cannot be tried on evidence adduced in support of charges of which she had no notice; that she

could not be expected to meet evidence of fraud where no fraud was charged; that, being thus lulled into security, by the silence of her accuser, she cannot be condemned, even if she had failed to meet the accusation which is raised after the evidence is in—evidence, which she has neither the time nor the opportunity to rebut or to explain, because of not having any warning or notice of the charge or the attack.

5. We respectfully submit that in arriving at the conclusion in reference to Mrs. Bobb, that, "in three months and a half, from August 3d to November 30th, 1875, she had in bank, of her own money, outside of moneys arising from discounts, the sum of $20,318.50, and from August 3d, 1875, to August 2d, 1877, she had in bank, of her own money, $46,000 and over;" division number two overlooked the debtor side of the bank account, which we fully set forth, but which respondent omitted from his abstract and statement, and overlooked the usages of banks, and overlooked Mrs. Bobb's statements as to the source of so much of her money (loans on mortgage), and shows also in the strongest light, the justice and necessity of the rule of "Reed *vs.* Bott;" that surprises ought not be allowed, and that opportunities for explanation should be given by the allegations of the pleadings: so, also, in arriving at the conclusion that "it was impossible for her income to have produced the sums she claimed it did," the fact is overlooked that Mrs. Bobb had no warning in the pleadings or otherwise, that she would be charged with having received money from Charles Bobb, or with having any of his money, or that the insolvency of Charles Bobb would be relied on, or be alleged, or attempted to be proved, because no such allegation was made by plaintiff, and hence, this appellant did not feel called upon to explain, or think of explaining those matters by which she is now condemned, and we respectfully submit that she, being taken by surprise, and being misled by the pleadings, and having, in view the time-honored rule that
393 the decision will be pronounced "*secundum allegata et probata*," so recently affirmed here in Reed *vs.* Bott, 100 Mo. 62," it is severe to reproach Mrs. Bobb as to one of those matters, that, of it, she "gives no explanation." How could she anticipate that an explanation would be expected, when there was nothing charged against her?

6. The statement in the opinion, that Charles Bobb "never paid a cent on the debt he owed plaintiffs," shows that the facts of the case have been overlooked. We submit that the decree rendered against Charles Bobb in favor of the plaintiffs was for issues and profits of a gift, given them by Charles Bobb, and as to those issues and profits Charles Bobb was not a creditor within the meaning of the statute concerning fraudulent conveyances, under which plaintiff in this action brings this proceeding.

7. There is no allegation of the insolvency of Charles Bobb in the pleadings, yet the entire opinion rests on establishing such insolvency as existing before the year 1875, and hence, an issue has been determined which had not been made by the pleadings, and of which no notice had been given to appellant.

8. There is no allegation in the pleadings that Charles Bobb, in fraud of his creditors, donated money or property to this appellant, nor was any notice given to this appellant that such an issue would be raised, yet it is the most prominent subject involved in the discussions of the issues by division number two.

9. In arriving at the conclusion that the Bird property was purchased with the money of Charles Bobb, division number two overlooked the testimony to which attention was called in appellant's brief.

10. The calculation on which it is held that Mrs. Bobb had not money of her own to pay for the Bird place, is stated to rest on the assumption that Charles Bobb was the owner of the notes secured by deed of trust on the Haydon place, because there was in evidence a release of that deed of trust by him as "assignee." But the fact is overlooked that the admission of this release in evidence was objected to, and that it was certainly incompetent, and that Charles Bobb on the facts adduced could not have owned the fee and held the encumbrance on it alone, at the same time.

11. The statement in the opinion that this court cannot know what facts were found by the trial court, overlooks the well-settled principle that the trial court cannot find any fact which is not supported by evidence, and that in this case all the evidence is stated to be in the record, and therefore as matter of law, that this court has before it every fact which could be found by the court below, and if this court cannot see, on the evidence, what finding was made as to any particular matter, by the court below, they are held to conclude that it made the same finding of fact as this court would make on the evidence preserved in the record.

The Federal Questions.

12. In support of this motion we also respectfully urge that the decision of division number two, denies to this appellant the equal protection of the laws and deprives her of her property without due process of law, in contravention of the fourteenth amendment of the Constitution of the United States, in this—

The hearing in this cause was had and said opinion rendered by said judges of this court constituting said division number two. And this appellant was compelled to attend and argue this cause before said "division two," all by virtue and because of a constitutional amendment adopted by the State of Missouri on the first Monday of November, 1890, which provides as follows:

SEC. I. The supreme court shall consist of seven judges, and after the first Monday in January, 1891, shall be divided into two divisions, as follows: One division to consist of four judges of the court and to be known as division number one, and the other to consist of the remaining judges and to be known as division number two.

394 The divisions shall sit separately for the hearing and disposition of causes and matters pertaining thereto, and shall have concurrent jurisdiction of all matters and causes in the supreme court, except that division number two shall have ex-

clusive cognizance of all criminal cases pending in said court: Provided that a cause therein may be transferred to the court as provided in section four of this amendment. The division of business of which said divisions have concurrent jurisdiction shall be made as the supreme court may determine. A majority of the judges of a division shall constitute a quorum thereof, and all orders, judgments and decrees, of either division, as to causes and matters pending before it shall have the force and effect of those of the court.

SEC. IV. When the judges of a division are equally divided in opinion in a cause, or when a judge of a division dissents from the opinion therein, or when a Federal question is involved, the cause, on the application of the losing party, shall be transferred to the court for its decision; or when a decision in which a cause is pending shall so order, the cause shall be transferred to the court for its decision.

SEC. V. (Contracted). The court may dispense with the divisions when in its opinion business will justify it, and may restore them again when they think them required. The four judges oldest in commission are to compose division number one, and the three remaining judges are to compose division number two.

The effect of which constitutional amendment is to deny to citizens of the State of Missouri suitors in this court, and within the jurisdiction of the State of Missouri and of this court, particularly this appellant, of the equal protection of the laws for themselves and herself, and their and her property, and to deprive appellant of her property without due process of law, contrary to the provisions of the fourteenth amendment of the Constitution of the United States—in this:

Said constitutional amendment of the State of Missouri requires the division of this court into two independent bodies, each authorized by law to hear and finally determine all classes and kinds of civil causes without any supervision or control of this court or of each other, save in four excepted cases, to none of which does this case at bar belong; makes the assignment of members to each division temporary, arbitrary and without any rule or restrictions; and makes the assignment of causes to each division for hearing and determination a matter of mere choice, chance or fancy, not calling for the exercise of judgment; so that two citizens, each before this court, in the same capacity, in a cause involving identically the same facts and the same legal questions, may have their causes assigned to different divisions of this court by an act not the exercise of discretion, or calling for the exercise of judgment, but made merely as fancy may suggest or accident produce. And whilst one citizen may be adjudged by one division entitled to relief, the other citizen may be denied relief by the other division, and as in the case of this appellant, rules of law may be adopted and declared to be correct by one division of this court composed of a minority of this court, and the youngest of commission, which the members of the other division repudiate or have repudiated, in official opinions as such judges; thus having two sets of opposing and contradictory laws and decisions in this State, and without rule

or the exercise of judgment, and perhaps by chance, selecting what citizen shall be compelled to submit to and be governed by the one set of decisions and laws, and what citizen shall be compelled to submit and be governed by the other set. And thereby there is denied to one citizen the protection of the laws equal to that given to another citizen similarly situated, and seeking the same relief under similar circumstances. That in the case at bar, had this appellant's appeal been heard before "division I" of this court composed of a majority of the judges of this court, on the rulings heretofore made by the members of said "division I" the appeal of appellant would have been sustained as hereinbefore pointed out, and therefore the effect of said constitutional amendment has been to deny this appellant the equal protection of the laws, and to deprive her of her property without due process of law, all in contravention to the said fourteenth amendment of the Constitution of the United States.

13. On this appeal the appellate court have before them for consideration the facts and the law of the cause thereof, and the
395 court below and "division II" of this court have, without notice to this appellant of their intention so to do, heard charges of alleged fraud asserted to have been committed by her, and by which it is alleged she acquired money and property, and have, without any previous notice to this appellant of such charges, or that evidence would be heard thereon, and without due process of law, entertained such proofs, and pronounced a decree against this appellant and deprived her thereby of her property described in the petition in this cause as the property of defendant, Charles Bobb.

In this State our pleading is regulated by a code, the common law is adopted by virtue of a statute, and the interpretation of the code or statute made by this court is as much part of the code or statute as if embodied in it. This State has, therefore, by virtue of the opinion of division number two, in this cause, if it be permitted to stand as the decision of this cause, deprived this appellant of her property, on charges of which she had no notice, and of which, therefore, the court had no jurisdiction to entertain or try, and has deprived her of her property without due process of law, in contravention of the fourteenth amendment of the Constitution of the United States.

M. KINEALY & JAS. R. KINEALY,
Attorneys for Appellant (Martha E. Bobb).

396 In the Supreme Court, April Term, 1891.

DORSEY A. JAMISON *et al.*, Respondents,
vs.
HENRY C. BAGOT *et al.*, Appellants.

Motion to Transfer Cause to the Court in Banc.

Martha E. Bobb, appellant, in this cause comes and moves the supreme court to transfer this cause to the full court, composed of

the seven judges thereof, for hearing and rehearing for the reasons following, viz:

1. Because there are two Federal questions involved in this cause, as is more fully set forth and shown in the motion for a rehearing hereto annexed and made a part of this motion in paragraphs numbered "12" and "13."

2. Because this appellant is a citizen of the United States and of the State of Missouri and on the basis of the ruling of division number two, of this court, interpreting the code of practice of the State of Missouri, the State of Missouri and the courts thereof have, by virtue of the law of Missouri, declared that this appellant shall be deprived of her property on charges and allegations of fraud and of obtaining and having money of Charles Bobb, of which she had no notice, and to prepare to meet which with evidence no opportunity was afforded her, and thus is depriving her of her property without due process of law, contrary to the provisions of the fourteenth amendment to the Constitution of the United States.

3. Because under and by virtue of the provisions of the amendment to the constitution of the State of Missouri, adopted on the first Monday of November last, this cause was assigned by an act of this court as the result of the inclination of the judges or by accident, and not the exercise of a judicial discretion, or in accordance with rule, to be heard and determined by three of the judges of this court, and whose opinions on the vital questions of law involved now appear to be at variance with the opinions hereto officially expressed by the remaining four judges of this court, and that thereby, and as the result thereof, this appellant has been deprived, and it is being attempted to deprive her, of her property without due process of law and she has been denied the equal protection of the laws; all in contravention of the provisions of the fourteenth amendment of the Constitution of the United States.

3. Because the judges of said division number two, in their opinion in this cause have, as this appellant contends, disregarded the opinions of the majority of the judges of this court, heretofore officially expressed on vital points involved in the cause, and have done so to the injury of this appellant, and therefore, as this motion is a "matter" pending in this court, to be decided on the record alone, it is within the power of this court under section I of the constitutional amendment of 1890, of the constitution of this State, and will be in furtherance of justice and tend to procure uniformity in the law laid down by this court, to be heard before judges of this court, sitting in banc.

M. KINEALY &
JAS. R. KINEALY,
Attorneys for Appellant Martha E. Bobb.

397 And afterwards, to wit, on the 1st day of July, 1891, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri, Division No. 2.

D. A. JAMISON, Adm'r, &c., Resp.,
v.
HENRY C. BAGOT *et al.*, App.

All the judges present.

Now, at this day, the court, having fully considered and understood the motions heretofore filed for a rehearing herein and to transfer this cause to the court in banc, doth order that said motions be, and they are hereby, denied.

And afterwards, to wit, in the vacation of said court and on the 13th day of July, 1891, the following further proceedings were had in said cause, to wit:

D. A. JAMISON, Adm'r, &c., *et al.*, Resp.,
v.
H. C. BAGOT *et al.*, App.

Come now the said appellants, by attorney, and file their petition for a writ of error and also an assignment of errors herein.

Which said petition for a writ of error is in words and figures as follows, to wit:

In the Supreme Court of Missouri, April Term, 1891.

DORSEY A. JAMISON, Adm'r, and JOHN H. BOBB, Respondents,
vs.
HENRY C. BAGOT, MARTHA E. BOBB, *et al.*, Appellants.

Your petitioners, Martha E. Bobb, Henry C. Bagot, Charles Bobb, and the other appellants in said cause, come and respectfully state that they are advised that in the record of this cause
398 it appears that there are involved two Federal questions, in which it appears, as they are advised, that by the decree and rulings in this court in said cause they are denied rights secured to them by the fourteenth amendment of the Constitution of the United States in these particulars, to wit:

1. The hearing in this cause was had and said opinion rendered by said judges of this court constituting said division number two, and this appellant was compelled to attend and argue this cause before said "division two," all by virtue and because of a constitutional amendment adopted by the State of Missouri on the first Monday of November, 1890, which provides as follows:

SEC. 1. The supreme court shall consist of seven judges, and after the first Monday in January, 1891, shall be divided into two divisions, as follows: One division to consist of four judges of the court and to be known as division number one, and the other to consist of the remaining judges and to be known as division number two. The divisions shall sit separately for the hearing and disposition of causes and matters pertaining thereto, and shall have concurrent jurisdiction of all matters and causes in the supreme

court, except that division number two shall have exclusive cognizance of all criminal cases pending in said court: Provided that a cause therein may be transferred to the court as provided in section four of this amendment. The division of business of which said divisions have concurrent jurisdiction shall be made as the supreme court may determine. A majority of the judges of a division shall constitute a quorum thereof, and all orders, judgments and decrees, of either division, as to causes and matters pending before it shall have the force and effect of those of the court.

399 SEC. IV. When the judges of a division are equally divided in opinion in a cause, or when a judge of a division dissents from the opinion therein, or when a Federal question is involved, the cause, on the application of the losing party, shall be transferred to the court for its decision; or when a decision in which a cause is pending shall so order, the cause shall be transferred to the court for its decision.

SEC. V. (Contracted.) The court may dispense with the divisions when in its opinion business will justify it, and may restore them again when they think them required. The four judges oldest in commission are to compose division number one, and the three remaining judges are to compose division No. two.

The effect of which constitutional amendment is to deny to citizens of the State of Missouri, suitors in this court and within the jurisdiction of the State of Missouri and of this court, particularly this appellant, of the equal protection of the laws for themselves and herself and their and her property, and to deprive appellant of her property without due process of law, contrary to the provisions of the fourteenth amendment of the Constitution of the United States, in this:

Said constitutional amendment of the State of Missouri requires the division of this court into two independent bodies, each authorized by law to hear and finally determine all classes and kinds of civil causes without any supervision or control of this court or of each other save in four excepted cases, to none of which does this case at bar belong; makes the assignment of members to each division temporary, arbitrary, and without any rule or restrictions, and makes the assignment of causes to each division for hearing and determination a matter of mere choice, chance, or fancy, not

400 calling for the exercise of judgment, so that two citizens, each before this court in the same capacity, in a cause involving identically the same facts and the same legal questions, may have their causes assigned to different divisions of this court by an act, not the exercise of discretion or calling for the exercise of judgment, but merely as fancy may suggest or accident produce, and whilst one citizen may be adjudged by one division entitled to relief the other citizen may be denied relief by the other division, and, as in the case of this appellant, rules of law may be adopted and declared to be correct by one division of this court, composed of the minority of this court and the youngest of commission, which the members of the other division repudiate or have repudiated in official opinions as such judges, thus having two sets of opposing

and contradictory laws and decisions in this State, and, without rule or the exercise of judgment and perhaps by chance, selecting what citizen shall be compelled to submit to and be governed by the one set of decisions and laws and what citizen shall be compelled to submit — and be governed by the other set, and thereby there is denied to one citizen the protection of the laws equal to that given to another citizen similarly situated and seeking the same relief under similar circumstances; that in the case at bar, had this appellant's appeal been heard before "division I" of this court, composed of a majority of the judges of this court, on the rulings heretofore made by the members of "division I" the appeal of appellant would have been sustained, as hereinbefore pointed out, and therefore the effect of said constitutional amendment has been to deny this appellant the equal protection of the laws and to deprive her of her property without due process of law, all in
401 contravention to the said fourteenth amendment of the Constitution of the United States.

13. On this appeal the appellate court have before them for consideration the facts and the law of the cause thereof, and the court below and "division II" of this court have, without notice to this appellant of their intention so to do, heard charges of alleged fraud asserted to have been committed by her, and by which it is alleged she acquired money and property, and have, without any previous notice to this appellant of such charges or that evidence would be heard thereon and without due process of law, entertained such proofs and pronounced a decree against this appellant and deprived her thereby of her property described in the petition in this cause as the property of defendant Charles Bobb.

In this State our pleading is regulated by a code, the common law is adopted by virtue of a statute, and the interpretation of the code or statute made by this court is as much part of the code or statute as if embodied in it. This State has, therefore, by virtue of the opinion of division number two in this cause, if it be permitted to stand as the decision of this cause, deprived this appellant of her property on charges of which she had no notice, and of which, therefore, the court had no jurisdiction to entertain or try, and has deprived her of her property without due process or law, in contravention of the fourteenth amendment of the Constitution of the United States.

Wherefore, in order that the rights of appellants in those matters may be determined by the Supreme Court of the United States, your petitioners pray that a writ of error be allowed to them to the hon. the judges of the supreme court of Missouri in said cause.

THOS. THOROUGHMAN AND
M. KINEALY & JAS. R. KINEALY,
402 *Attorneys for Appellant (Martha E. Bobb) and the Other Appellants.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Martha E. Bobb, appellant above named, being duly sworn, on her oath says that the statements set forth in the foregoing petition are true.

MARTHA E. BOBB.

Sworn to and subscribed before me at city of St. Louis this 11th day of July, 1891.

ENRIQUE PARMER,
[SEAL.] *Notary Public, City of St. Louis, Mo.*

My term exp. June 28, '93.

And which said assignment of errors is in words and figures as follows, to wit:

Supreme Court of the United States.

HENRY C. BAGOT, LOUISA LETCHER, Widow and Administratrix of John Letcher, Deceased; William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb and Martha E. Bobb, Plaintiffs in Error,

vs.

DORSEY A. JAMISON, Administrator *de bonis non* of Charles L. Bobb, Deceased, and JOHN H. BOBB, Defendants in Error.

403 Of the October term, in the year of our Lord one thousand eight hundred and ninety-one.

Afterwards, to wit, on the second Monday of October, in the said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said Henry C. Bagot, Louisa Letcher, widow and administratrix of John Letcher, deceased; William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb and Martha E. Bobb, by Michael Kinealy & James R. Kinealy, their attorneys, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid and in overruling the motions for rehearing and to transfer said cause to the said supreme court of Missouri in banc, there is manifest error in this, to wit: That the bill in equity and petition aforesaid and the matters therein contained are not sufficient in law for the said John H. Bobb or Dorsey A. Jamison or both to have or maintain their aforesaid action against said Martha E. Bobb or to obtain against her the aforesaid decree or the aforesaid rulings on said motions or to have or maintain their aforesaid action against said Henry C. Bagot, Charles Bobb, Louis- Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher,

Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook or Levi L. Ashbrook. There is also error in this, to wit: That this cause was, in the supreme court of Missouri, heard by the Honorables Judges Thomas, Macfarlane, and Gantt, three of the seven judges of said court and who constitute "division number two" of said court, as were also said motions.

The hearing in this cause was had and said opinion ren-
404 dered by said judges of this court constituting said division number two, and plaintiffs in error were compelled to attend and argue this cause before said "division two," all by virtue and because of a constitutional amendment adopted by the State of Missouri on the first Monday of November, 1890, which provides as follows:

SEC. 1. The supreme court shall consist of seven judges, and after the first Monday in January, 1891, shall be divided into two divisions, as follows: One division to consist of four judges of the court and to be known as division number one, and the other to consist of the remaining judges and to be known as division number two. The divisions shall sit separately for the hearing and disposition of causes and matters pertaining thereto, and shall have concurrent jurisdiction of all matters and causes in the supreme court, except that division number two shall have exclusive cognizance of all criminal cases pending in said court: Provided that a cause therein may be transferred to the court as provided in section four of this amendment. The division of business of which said divisions have concurrent jurisdiction shall be made as the supreme court may determine. A majority of the judges of a division shall constitute a quorum thereof, and all orders, judgments and decrees, of either division, as to causes and matters pending before it shall have the force and effect of those of the court.

SEC. IV. When the judges of a division are equally divided in opinion in a cause, or when a judge of a division dissents from the opinion therein, or when a Federal question is involved, the cause on the application of the losing party, shall be transferred to the court for its decision; or when a decision in which a cause is pending shall so order, the cause shall be transferred to the
405 court for its decision.

SEC. V. (Contracted.) The court may dispense with the divisions when in its opinion business will justify it, and may restore them again when they think them required. The four judges oldest in commission are to compose division number one, and the three remaining judges are to compose division number two.

The effect of which constitutional amendment is to deny to citizens of the State of Missouri, suitors in this court and within the jurisdiction of the State of Missouri and this court, particularly said Martha E. Bobb, of the equal protection of the laws for themselves and herself and their and her property and to deprive Martha E. Bobb of her property without due process of law, contrary to the provisions of the fourteenth amendment of the Constitution of the United States, in this:

Said constitutional amendment of the State of Missouri requires

the division of this court into two independent bodies, each authorized by law to hear and finally determine all classes and kinds of civil causes without any supervision or control of this court or of each other, save in four excepted cases, to none of which does this case at bar belong; makes the assignment of members to each division temporary, arbitrary, and without any rule or restrictions, and makes the assignment of causes to each division for hearing and determination a matter of mere choice, chance, or fancy, not calling for the exercise of judgment, so that two citizens, each before this court in the same capacity, in a cause involving identically the same facts and the same legal questions, may have their causes assigned to different divisions of this court by an act not the exercise of discretion or calling for the exercise of judgment, but made merely as fancy may suggest or accident produce; and whilst one citi-
406 zen may be adjudged by one division entitled to relief the other citizen may be denied relief by the other division, and, as in the case of this appellant, rules of law may be adopted and declared to be correct by one division of this court, composed of a minority of this court and the youngest of commission, which the members of the other division repudiate or have repudiated in official opinions as such judges, thus having two sets of opposing and contradictory laws and decisions in this State and without rule or the exercise of judgment, and, perhaps, by chance selecting what citizen shall be compelled to submit to and be governed by the one set of decisions and laws and what citizen shall be compelled to submit and be governed by the other set, and thereby there is denied to one citizen the protection of the laws equal to that given to another citizen similarly situated and seeking the same relief under similar circumstances; that in the case at bar had this appellant's appeal been heard before "division 1" of this court composed of a majority of the judges of this court, on the rulings heretofore made by the members of said "division 1," the appeal of said appellants would have been sustained, especially of appellant Martha E. Bobb, and therefore the effect of said constitutional amendment has been to deny said Martha E. Bobb the equal protection of the laws and to deprive her of her property without due process of law, all in contravention to the said fourteenth amendment of the Constitution of the United States.

13. On this appeal the appellate court have before them for consideration the facts and the law of the cause thereof, and the court below and "division II" of this court have, without notice to this appellant of their intention so to do, heard charges and evidence of alleged fraud asserted to have been committed by her, and by
407 which it is alleged she acquired money and property, and have, without any previous notice to the appellant Martha E. Bobb of such charges or that evidence would be heard thereon and without due process of law, entertained such proofs and pronounced a decree against said appellant and deprived her thereby of her property described in the petition in this cause as the property of defendant Charles Bobb, and this although no such relief was asked

in or by said bill or petition against said Martha E. Bobb, now plaintiff in error in this court.

In this State our pleading is regulated by a code, the common law is adopted by virtue of a statute, and the interpretation of the code or statute made by this court is as much part of the code or statute as if embodied in it. This State has, therefore, by virtue of the opinion of division number two in this cause, if it be permitted to stand as the decision of this cause, deprived said Martha E. Bobb of her property on charges of which she had no notice and of which, therefore, the court had no jurisdiction to entertain or try, and has deprived her of her property without due process of law, in contravention of the fourteenth amendment of the Constitution of the United States.

And the said Martha E. Bobb, appellant aforesaid and now plaintiff in error in this court, and the said Henry C. Bagot, Louisa Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook, Levi L. Ashbrook, and Charles Bobb, also plaintiffs in error herein, pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of said judgment, &c.

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THOS. THOROUGHMAN,
MICHAEL KINEALY &
JAS. R. KINEALY,
Solicitors & Attorneys for Plaintiffs in Error.

And afterwards, to wit, in the vacation of said court and on the 14th day of July, 1891, the following further proceedings were had in said cause, to wit:

DORSEY A. JAMISON, Adm'r, &c., *et al.*, Respondents,
vs.
HENRY C. BAGOT *et al.*, Apellants.

Now, at this day, there is presented to the Honorable Thomas A. Sherwood, chief justice of the supreme court of Missouri, at chambers, a writ of error to reverse the judgment in the above cause, a citation directed to the said respondents citing and admonishing them to be and appear at a Supreme Court of the United States on the 13th day of August next, a supersedeas bond in the sum of twenty-five hundred dollars; which said writ of error is allowed, said citation signed and bond approved and made a part of the record herein.

And afterwards, to wit, on the 30th day of July, 1891, said writ of error, citation, and bond were filed in the office of the clerk of the supreme court of the State of Missouri, and which said citation is in words and figures as follows, to wit:

409 THE UNITED STATES OF AMERICA:

To Dorsey A. Jamison, administrator of the estate of Charles L. Bobb, deceased, and John H. Bobb, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the capitol, at the city of Washington, in the District of Columbia, thirty days from and after the day this citation bears date, pursuant to a writ of error issued from the clerk's office of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri and filed in office of the clerk of the supreme court of Missouri, wherein Henry C. Bagot, Louisa Letcher, widow and administratrix of John Letcher, deceased; Campbell Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb, and Martha E. Bobb are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of July, in the year of our Lord one thousand eight hundred and ninety-one.

T. A. SHERWOOD,
Chief Justice of the Supreme Court of the State of Missouri.

July 14th, 1891.

410 And which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, Charles Bobb and Martha E. Bobb as principals, Alfred Vallat and Thomas A. Moore as sureties, are held and firmly bound unto Dorsey A. Jamison, administrator *de bonis non* of Charles L. Bobb, deceased, and to John H. Bobb in the full and just sum of twenty-five hundred dollars, to be paid to the said Dorsey A. Jamison, administrator, and John H. Bobb, their sucessors, heirs, executors, or assigns; to which payment well and truly to be made we bind ourselves, o-r heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at the April term, A. D. 1891, of the supreme court of the State of Missouri, in a suit depending in the said court between Dorsey A. Jamison, administrator *de bonis non* of Charles L. Bobb, deceased, and John H. Bobb, plaintiffs, and Henry C. Bagot, Louisa Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook, Levi L. Ashbrook, Charles Bobb, and Martha E. Bobb, defendants, judgment was rendered against the said Henry C. Bagot, Martha E. Bobb, and the other said defendants above named, and the said Henry C. Bagot,

Martha E. Bobb, and other defendants above named have obtained a writ of error out of the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation directed to the said Dorsey A. Jamison, administrator, and John H. Bobb citing and admonishing them to be and appear in the Supreme Court of the United States, at the capitol, at the city of Washington, in the District of Columbia, thirty days from the date of said citation:

411 Now, the condition of the above obligation is such that if the said Martha E. Bobb, Charles Bobb, Henry C. Bagot, and the other defendants in the above cause named shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else remain in full force and effect.

CHAS. BOBB. [SEAL.]
MARTHA E. BOBB. [SEAL.]
ALFRED VALLAT. [SEAL.]
THOMAS A. MOORE. [SEAL.]

Signed and sealed in my presence this 16th day of July, A. D. 1891.

PHILIP H. ZEPP,
Clerk of Circuit Court, City of St Louis, Missouri.

Approved:
T. A. SHERWOOD,
Chief Justice of the Supreme Court of the State of Missouri.

The sureties in the above bond, viz., Alfred Vallat and Thomas A. Moore, were sworn and examined by me and I find the security good and sufficient.
July 16th, 1891.

JACOB KLEIN,
Judge of the Circuit Court, City of St. Louis.

412 STATE OF MISSOURI, *sct.*

I, Jacob D. Connor, clerk of the supreme court of the State of Missouri, certify that the above and foregoing is a full, true, and complete copy of the proceedings of the supreme court of the State of Missouri in the case of Dorsey A. Jamison, adm'r, &c., *et al.*, respondents, *vs.* Henry C. Bagot *et al.*, appellants, as full as the same remains of record and on file in my office.

Seal of the Supreme Court of Missouri.

Witness my hand and the seal of said court, done at office in the city of Jefferson this 5th day of August, 1891.
JACOB D. CONNOR, *Clerk.*

413 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State

of Missouri, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Dorsey A. Jamison, administrator *de bonis non* of Charles L. Bobb, deceased, and John H. Bobb, respondents, and Henry C. Bagot, Louisa Letcher, William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook, Levi L. Ashbrook, Charles Bobb, and Martha E. Bobb, appellants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Martha E. Bobb, Charles Bobb, Henry C. Bagot, Louisa Letcher,
414 William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook, and Levi L. Ashbrook, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington and filed in the office of the clerk of the Supreme Court of the United States on or before the 13th day of August, 1891, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri; dated as aforesaid.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Circuit Court,
By GEO. F. HAID, *Deputy.*

July 14th, 1891.

Allowed by—
T. A. SHERWOOD,
Chief Justice of the Supreme Court of Missouri.

415 *Return to Writ.*

STATE OF MISSOURI, } ss:
Supreme Court, }

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court, at the city of Jefferson, this 5th day of August, A. D. 1891.

JACOB D. CONNER, *Clerk.*

416	Laughlin & Kern. 4912. Hitchcock, Madill & Finkelnburg.	John McGowan *et al.*, resp., *vs.* St. L. Ore and Steel Co., ap.	St. L. city.
	C. P. and J. D. Johnson. 4913. Jas. L. Blair.	Mechanics' B'k, etc., resp., *vs.* Wm. Gilpin, ap.	St. L. city.
	T. J. Rowe. 4914. D. T. Jewett.	Sarah A. Macklin, resp., *vs.* R. Schmidt *et al.*, ap.	St. L. city.
	Valle Reyburn and J. S. Laurie. 4915. Dyer, Lee & Ellis and D. Goldsmith.	Valle Reyburn, adm'r, resp., *vs.* W. C. Mitchell *et al.*, ap.	St. L. city.
	T. J. Rowe. 4916. M. and J. R. Kinealy.	D. A. Jamison, adm'r, resp., *vs.* H. C. Bagot *et al.*, ap.	St. L. city.

Twentieth day, Wednesday, November 5.

C. P. and J. D. Johnson. 4917. Noble & Orrick.	Thos. E. Dillon *et al.*, P. E., *vs.* Mary Hunt, exr., D. E.	St. L. city.
H. H. Denison. 4918. Hitchcock, Madill & Finkelnburg.	F. A. Smith, ap., *vs.* Caroline M. McCorkle *et al.*, resp.	St. L. city.

STATE OF MISSOURI, *sct:*

I, Jacob D. Conner, clerk of the supreme court of the State of Missouri, certify that the above is a true copy of page 29 of the October docket, 1890, of the supreme court of Missouri as fully as the same appears on the judges' dockets of said court.

Witness my hand and the seal of said court, at office, in the city of Jefferson, this 6th day of August, 1891.

[Seal of the Supreme Court of Missouri.]

JACOB D. CONNER, *Clerk*,
By W. R. BELT, *D. C.*

Endorsed on cover: Case No. 14,805. Missouri supreme court. No. 267. Martha E. Bobb, Charles Bobb, Henry C. Bagot, *et al.*, plaintiffs in error, *vs.* Dorsey A. Jamison, administrator of the estate of Charles L. Bobb, deceased, and John H. Bobb. Filed August 13, 1891.

Oct. 30
155-416

Office Supreme Court U. S.
FILED
OCT 30 1894
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB ET AL., PLAINTIFFS IN ERROR,

vs.

D. A. JAMISON, ADMINISTRATOR, ETC., ET AL., DEFENDANTS IN ERROR.

Motion Either to Dismiss Writ of Error or to Affirm the Judgment of Supreme Court of Missouri, under Rule 6, Sec. 5, of This Court.

Now, at this day, comes D. A. Jamison, administrator, etc., and John H. Bobb, defendants in error in the above-entitled cause, and move this honorable Court to dismiss the writ of error herein or affirm the judgment herein for reasons following, viz:

First. Because the record herein shows that the cause was heard and determined by the Honorables Judges Gantt, Thomas, and Macfarlane, constituting all the judges of "division number two (2)" of the supreme court of Missouri, and that the Hon. Thomas A. Sherwood, who allowed the

writ of error herein, was not one of the judges of division number two (2) of said court and was not the chief justice of the court rendering or passing the decree complained of by plaintiffs in error, and that said writ of error has not been allowed by a judge authorized to do so, and that this Court, therefore, has no jurisdiction.

Second. It does not appear from the face of the record that any Federal question was raised and presented to division number two (2) of the supreme court of Missouri.

Third. It does not appear from the record that any Federal question was decided by the supreme court of Missouri.

Fourth. It does not appear from the record that the decision of any Federal question was necessary to the judgment or decree rendered in the case.

Fifth. There is no Federal question in the case.

Sixth. Although the record may show that this Court has jurisdiction, it is manifest the writ of error was taken for delay only and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

T. J. ROWE,
Attorney for Defendants in Error.

[Endorsed:] In the Supreme Court of the United States. No. 267. October term, 1894. Martha E. Bobb *et al.*, plaintiffs in error, *vs.* D. A. Jamison, adm., etc., *et al.*, defendants in error. Motion of defendants in error to either dismiss writ of error or to affirm the judgment of the supreme court of Missouri, under rule 6, sec. 5, of this Court. Thomas J. Rowe, attorney for defendants in error.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1894.

MARTHA E. BOBB *et al., Plaintiffs in Error,*
vs.
D. A. JAMISON, *Administrator, etc.,* and JOHN H. BOBB, *Defendants in Error.* } No. 267.

To the plaintiffs in error:

You will please take notice that on Monday, October 22, 1894, we filed in the above-entitled cause a motion to either dismiss writ of error or affirm judgment of supreme court of Missouri, a copy of which is hereto attached and made a part of this notice, and take further notice that said motion will be submitted on Monday, November 26, 1894.

D. A. JAMISON, etc., and
JOHN H. BOBB,
Defendants in Error,
By T. J. ROWE, *Their Counsel.*

CITY OF ST. LOUIS, } ss:
State of Missouri, }

William Z. Long, of lawful age, being duly sworn, on his oath says he served the annexed notice of motion of defendants in error to dismiss writ of error or affirm judgment on the 25th day of October, A. D. 1894, on Martha E. Bobb and Charles Bobb, plaintiffs in error, by leaving a true copy of same at the usual place of abode of said Martha E. Bobb and Charles Bobb, at number 2926 Pine street, St. Louis, Missouri, with a member of their family over the age of fifteen years.

Affiant further says that on the same day and at the same place he delivered to a member of the family of Charles Bobb and Martha E. Bobb, plaintiffs in error, a copy of the statement and argument of defendants in error in support of said motion.

Affiant further says that he delivered a true copy of said notice and motion to Henry C. Bagot on the 25th day of October, 1894, in the city of St. Louis, Missouri.

Affiant further says that he served a copy of said notice and motion on Michael Kinealy, Esq., who was of counsel for plaintiffs in error in the supreme court of the State of Missouri, on the 25th day of October, A. D. 1894, by delivering a true copy of said notice and motion to the person in charge of his law office, in the city of St. Louis, Missouri.

Affiant further says that he is informed and believes that plaintiffs in error have no counsel who resides in Washington, D. C., and have no counsel of record in this honorable Court.

WILLIAM Z. LONG.

Subscribed and sworn to before me this 27th day of October, 1894.

[Seal of the Circuit Court, City of St. Louis, Missouri.]

PHILIP H. ZEPP,
Clerk Circuit Court, City of St. Louis,
State of Missouri.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, Daniel Dillon, presiding judge of the circuit court of the eighth judicial circuit of the State of Missouri (which circuit is composed of the city aforesaid, and said court being a court of record in and for said city and State), certify that Philip H. Zepp, whose signature appears to the foregoing certificate, is and was at the time of signing the same clerk of the circuit court of the city of St. Louis, a court of record within and for the city of St. Louis; that the said attestation is in due form and by the proper officer.

Given under my hand this twenty-seventh day of October, 1894.

DANIEL DILLON,
Presiding Judge of the Circuit Court of the Eighth
Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis (the same being a court of record in and for said city and State), certify that Daniel Dillon is presiding judge of the circuit court of the eighth judicial circuit of the State of Missouri, duly commissioned and qualified.

Seal of the Circuit Court, City of St. Louis, Missouri.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this twenty-seventh day of October, eighteen hundred and ninety-four.

PHILIP H. ZEPP, *Clerk.*

Clerk's fees, $1.50, paid by John H. Bobb October 27, 1894.

[Endorsed:] Nov. 26. Case No. 14,805. Supreme Court U. S., October term, 1894. Term No., 267. Martha E. Bobb *et al.*, pl'ffs in error, *vs.* Dorsey A. Jamison, adm'r, &c., *et al.* Affidavit as to service of notice of motion to dismiss on plaintiffs in error. Filed Oct. 30, 1894.

Office Supreme Court U. S.
FILED.
OCT 29 1894
JAMES H. McKENNEY,
CLERK.

115-416

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

MARTHA E. BOBB, ET AL.,
Plaintiffs in Error.
vs.
D. A. JAMISON, ADMR., ETC., AND JOHN H. BOBB,
Defendants in Error.
No. 267.

Statement and Argument of defendants in error in support of their motion to either dismiss or affirm the judgment of the Supreme Court of Missouri, under Rule 6, Sec. 5, of this Court.

THOMAS J. ROWE,
Attorney for Defendants in Error.

W. J. KESL, 317 OLIVE ST.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

MARTHA E. BOBB, ET AL.,
Plaintiffs in Error.
vs.
D. A. JAMISON, ADMR., ETC., AND JOHN H. BOBB,
Defendants in Error.
No. 267.

STATEMENT.

By a constitutional amendment adopted in November, 1890, the number of the judges of the Supreme Court of Missouri was increased from five to seven, and the two divisions of the court were created, one consisting of four judges, called Division No. One, and the other of three judges called Division No. Two. Said constitutional amendment went into effect the first Monday in January, 1891, and among other things contain the following provisions:

"Section 1. The Supreme Court shall consist of "seven judges, and, after the first Monday in January, "1891, shall be divided into two divisions, as follows: "One division to consist of four judges of the court and "to be known as Division Number One, the other to con- "sist of the remaining judges and to be known as Division "Number two. The divisions shall sit separately for the "hearing and disposition of causes and matters pertaining "thereto, and shall have concurrent jurisdiction of all "matters and causes in the Supreme Court, except that "Division Number Two shall have exclusive cognizance "of all criminal cases pending in said court. Provided, "that a cause therein may be transferred to the court as "provided in section four of this amendment. The divi- "sion of business of which said divisions have concurrent "jurisdiction shall be made made as the Supreme Court "may determine. A majority of the judges of a division "shall constitute a quorum thereof, and all orders, judg- "ments and decrees of either division as to causes and "matters pending before it, shall have the force and effect "of those of the court.

"Sec. 2. (Last sentence) The court shall elect its "chief justice and each division a presiding judge thereof.

"Sec. 3. The Supreme Court shall assign to each "division the causes and matters to be heard by it, of "which assignment due public notice shall be given, and "all laws relating to practice in the Supreme Court, as "well as the rules of the Supreme Court, shall apply to "each division so far as they may be applicable thereto. "The opinion of each division shall be in writing, and "shall be filed in the causes in which they shall be "respectively made during the term at which the cause "is submitted, and such opinions shall be a part of the "records of the Supreme Court. Each division shall have "authority to issue the original writs and exercise the powers

"enumerated in section three of article six of the Consti-
"tution.

"Sec. 4. When the judges of a division are equally
"divided in opinion in a cause, or when a judge of a
"division dissents from the opinion therein, or when a
"federal question is involved, the cause on the application
"of the losing party, shall be transferred to the court for
"its decision; or when a decision in which a cause is
"pending shall so order, the cause shall be transferred to
"the court for its decision."

Under and by virtue of the above constitutional amendent this cause was duly and properly assigned to Division Number Two (2) of said court, which division consisted of three judges, the Hon. J. B. Gantt, Hon. J. B. Macfarlane and Hon. J. L. Thomas. That said case was determined by said Division Number Two, constituted as aforesaid, on June 2nd, 1891, when they delivered their opinion, which is reported in 106 Mo. report, page 240.

See D. A. Jamison Adm. *et al.* vs. H. C. Bagot *et al.*, 106 Mo., 240.

The Honorable Thomas A. Sherwood was the Chief Justice of the Court in *banc*, but was not one of the Judges of Division Number Two (2) and did not hear nor determine said cause. The writ of error was allowed by Hon. Thomas A. Sherwood and was not allowed by the Chief Justice of Division Two (2) of said court. Plaintiffs in error did not attempt to raise a federal question in the cause until the court gave its opinion and affirmed the judgment of the State Circuit Court, and the federal question was raised for the first time when plaintiffs in error filed their motion for a hearing and a re-hearing before the court in *banc*.

See Jamison et al. vs. Bagot et al., 106 Mo., 240.

This motion was heard by the said judges of Division Number Two (2) and was by them overruled. Plaintiffs in error in their said motion for a hearing and a rehearing assigned, among others, the following reasons, viz:

"THE FEDERAL QUESTIONS.

"12. In support of this motion we also respectfully "urge that the decision of Division Number Two, denies "to this appellant the equal protection of the laws and "deprives her of her property without due process of law, "in contravention of the fourteenth amendment of the "Constitution of the United States, in this—

"The hearing in this cause was had and said opinion "rendered by said judges of this court constituting said "Division Number Two. And this appellant was com- "pelled to attend and argue this cause before said "Divi- "sion Two," all by virtue and because of a constitutional "amendment adopted by the State of Missouri on the first "Monday in November, 1890, which provides as follows:

"'Sec. I. The Supreme Court shall consist of seven "judges, and after the first Monday in January, 1891, "shall be divided into two divisions, as follows: One "division to consist of four judges of the court and to be "known as Division Number One, and the other to con- "sist of the remaining judges and to be known as Division "Number Two. The divisions shall sit separately for the "hearing and disposition of causes and matters pertaining "thereto, and shall have concurrent jurisdiction of all "matters and causes in the Supreme Court, except that "Division Number Two shall have exclusive cognizance "of all criminal cases pending in said court: Provided, "that a cause therein may be transferred to the court as "provided in section four of this amendment. The divi- "sion of business of which said divisions have concurrent

"jurisdiction shall be made as the Supreme Court may "determine. A majority of the judges of a division shall "constitute a quorum thereof, and all orders, judgments "and decrees, of either division, as to causes and matters "pending before it shall have the force and effect of those "of the court.'

"'Sec. IV. When the judges of a division are equally "divided in opinion in a cause, or when a judge of a divi- "sion dissents from the opinion therein, or when a Federal "question is involved, the cause, on the application of the "losing party, shall be transferred to the court for its "decision; or when a decision in which a cause is pend- "ing shall so order, the cause shall be transferred to court "for its decision.'

"Sec. V. (contracted). The court may dispense "with the divisions when in its opinion business will jus- "tify it, and may restore them again when they think "them required. The four judges oldest in commission "are to compose Division Number One, and the three "remaining judges are to compose Division Number Two.

"The effect of which constitutional amendment is to "deny citizens of the State of Missouri, suitors in this "court, and within the jurisdiction of the State of Mis- "souri and of this court, particularly this appellant, of the "equal protection of the laws for themselves and herself, "and their and her property, and to deprive appellant of "her property without due process of law, contrary to the "provisions of the fourteenth amendment of the Constitu- "tion of the United States—in this:

"Said constitutional amendment of the State of Mis- "souri requires the division of this court into two indepen- "dent bodies, each authorized by law to hear and finally "determine all classes and kinds of civil causes without "any supervision or control of this court or of each "other, save in four excepted cases, to none of which

This motion was heard by the said judges of Division Number Two (2) and was by them overruled. Plaintiffs in error in their said motion for a hearing and a rehearing assigned, among others, the following reasons, viz:

"THE FEDERAL QUESTIONS.

"12. In support of this motion we also respectfully "urge that the decision of Division Number Two, denies "to this appellant the equal protection of the laws and "deprives her of her property without due process of law, "in contravention of the fourteenth amendment of the "Constitution of the United States, in this—

"The hearing in this cause was had and said opinion "rendered by said judges of this court constituting said "Division Number Two. And this appellant was com- "pelled to attend and argue this cause before said "Divi- "sion Two," all by virtue and because of a constitutional "amendment adopted by the State of Missouri on the first "Monday in November, 1890, which provides as follows:

"'Sec. I. The Supreme Court shall consist of seven "judges, and after the first Monday in January, 1891, "shall be divided into two divisions, as follows: One "division to consist of four judges of the court and to be "known as Division Number One, and the other to con- "sist of the remaining judges and to be known as Division "Number Two. The divisions shall sit separately for the "hearing and disposition of causes and matters pertaining "thereto, and shall have concurrent jurisdiction of all "matters and causes in the Supreme Court, except that "Division Number Two shall have exclusive cognizance "of all criminal cases pending in said court: Provided, "that a cause therein may be transferred to the court as "provided in section four of this amendment. The divi- "sion of business of which said divisions have concurrent

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"'Sec. IV. When the judges of a division are equally "divided in opinion in a cause, or when a judge of a divi- "sion dissents from the opinion therein, or when a Federal "question is involved, the cause, on the application of the "losing party, shall be transferred to the court for its "decision; or when a decision in which a cause is pend- "ing shall so order, the cause shall be transferred to court "for its decision.'

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"The effect of which constitutional amendment is to "deny citizens of the State of Missouri, suitors in this "court, and within the jurisdiction of the State of Mis- "souri and of this court, particularly this appellant, of the "equal protection of the laws for themselves and herself, "and their and her property, and to deprive appellant of "her property without due process of law, contrary to the "provisions of the fourteenth amendment of the Constitu- "tion of the United States—in this:

"Said constitutional amendment of the State of Mis- "souri requires the division of this court into two indepen- "dent bodies, each authorized by law to hear and finally "determine all classes and kinds of civil causes without "any supervision or control of this court or of each "other, save in four excepted cases, to none of which

"does this case at bar belong; makes the assignment "of members to each division temporary, arbitrary "and without any rule or restrictions; and makes the "assignment of causes to each division for hearing and "determination a matter of mere choice, chance or fancy, "not calling for the exercise of judgment, so that two "citizens, each before this court, in the same capacity, in "a cause involving identically the same facts and the same "legal questions, may have their causes assigned to differ- "ent divisions of this court by an act not the exercise of "discretion, or calling for the exercise of judgment, but "made merely as fancy may suggest or accident produce. "And whilst one citizen may be adjudged by one division "entitled to relief, the other citizen may be denied relief "by the other division, and, as in the case of this appel- "lant, rules of law may be adopted and declared to be cor- "rect by one division of this court composed of a minority "of this court, and the youngest of commission, which the "members of the other division repudiate or have "repudiated in official opinions as such judges, thus hav- "ing two sets of opposing and contradictory laws and deci- "sions in this State, and without rule or the exercise of "judgment, and perhaps by chance selecting what citizen "shall be compelled to submit to and be governed by the "one set of decisions and laws, and what citizen shall be "compelled to submit and be governed by the other set. "And thereby is denied to one citizen the protection of "the laws equal to that given to another citizen similarly "situated and seeking the same relief under similar cir- "cumstances. That in the case at bar, had this appel- "lant's appeal been heard before "Division I" of this "court, composed of a majority of the judges of this "court, on the rulings heretofore made by the members of "said "Division I," the appeal of appellant would have "been sustained as hereinbefore pointed out, and therefore "the effect of said constitutional amendment has been to

" deny this appellant the equal protection of the laws and " to deprive her of her property without due process of " law, all in controvention to the said fourteenth amend- " ment of the Constitution of the United States.

" 13. On this appeal the Appellate Court have before " them for consideration the facts and the law of the cause " thereof. and the court below, and "Division II" of this " court have, without notice to this appellant of their " intention so to do, heard charges of alleged fraud " asserted to have been committed by her, and by which, " it is alleged, she acquired money and property, and " have, without any previous notice to this appellant of " such charges, or that evidence would be heard thereon, " and without due process of law, entertained such proof, " and pronounced a decree against this appellant and " deprived her thereby of her property described in the " petition in this cause as the property of defendants " Charles Bobb.

" In this State our pleading is regulated by a code, the " common law is adopted by virtue of a statute, and the " interpretation of the code or statute made by this court " is as much part of the code or statute as if embodied in " it. This State has, therefore, by virtue of the opinion of " Division Number Two in this cause, if it be permitted to " stand as the decision of this cause, deprived this appel- " lant of her property on charges of which she had no " notice, and of which, therefore, the court had no juris- " diction to entertain or try, and has deprived her of her " property without due process of law, in contravention of " the fourteenth amendment of the Constitution of the " United States."

By the above motion in said Division Number Two of the Supreme Court of Missouri, plaintiffs in error made their attack on the constitutional amendment of January, 1891, by which the number of the Judges of the Supreme

Court of Missouri was increased from five to seven and the court divided into two branches, having equal and co-ordinate powers and duties. Plaintiffs in error contend that said constitutional amendment of January, 1891, violates the fourteenth amendment to the Constitution of the United States.

ARGUMENT

I.

Hon. Thomas A. Sherwood was not a Judge of the court rendering the judgment in this cause, and had no authority to allow the writ of error. If the writ is allowed by one who has no authority to do so it will be dismissed.

In Bartemeyer vs. Iowa, 81 U. S. (14 Wall), 27, Mr. Justice Miller says: "This case is submitted to us on "printed argument. In this class of cases the court has "been in the habit of examining the record to see if it has "jurisdiction, whether the question is raised by counsel or "not; and the case before us we find ourselves compelled "to dismiss, because there is no proper allowance of the "writ of error. Writs of error to the Circuit Court, under "the 22d section of the judiciary act, issue as a matter of "course, and can be obtained from the clerk of the Circuit "Court, and, when filed in his office by the party, are "duly served. But writs of error to the State courts can "only issue when one of the questions mentioned in the "25th section of that act was decided by the court to "which the writ is directed, and in order that there may be "some security that such a question was decided in the "case, the statute requires that the citation MUST BE "SIGNED by the Chief Justice, or Judge, or Chancellor of "the court rendering or passing the judgment or decree

"complained of, or by a Justice of the Supreme Court of "the United States. It has been the settled doctrine of "this court that a writ of error to a State court "must be allowed by one of the Judges above mentioned, "or it will be dismissed for want of jurisdiction, "and the case before us raises the question, whether the "writ has been allowed by a judge authorized to do so. "The Supreme Court of Iowa, which rendered the judg- "ment complained of, is composed of a chief justice and "three associate justices, and this writ is allowed by one of "the associate justices. We are of the opinion that the act "of Congress requires that, when there is a court so com- "posed, the writ can only be allowed by the chief justice "of that court, or by a justice of the Supreme Court of the "United States. The result of this construction of the "Statute is that the Associate Justice of the Supreme Court "of Iowa who allowed the present writ had no authority to "do so, and it is accordingly dismissed."

Hon. Thos. A. Sherwood not having heard the arguments in the cause and the case not being before the division of the court of which he was a member could not tell whether a federal question had been considered by the court or whether the consideration of a federal question was necessary for the determination of the case.

The writ should be dismissed because not allowed by proper authority.

The motions of plaintiffs' in error for a hearing and re-hearing filed in the State Court will show that Hons. Judges Gantt, Thomas and Macfarlane were the Judges of division number two (2).

II.

There are no federal questions involved in this case, neither is the plaintiff in error deprived of her property without due process of law, neither is she denied the

equal protection of the laws, neither have the judges composing Division No. 2 disregarded the opinions of the majority of the court before officially expressed. Martha E. Bobb, et al., appeared by counsel at and before the hearing in Division No. 2 of the Supreme Court, and had their case orally argued and submitted on their briefs; no constitutional question was raised directly or indirectly until the decision was rendered against them, and it is too late for them to attempt to raise the question after judgment is rendered against them. They should have made their claim, if they had any to make, at the proper time, before cause was heard and determined by the court.

By not asserting the invalidity of the constitutional provision by which the case was assigned to Division No. 2, before the determination of the case, they did not bring themselves within the provisions of Section 709, Revised Statutes.

Mr. Justice Gray, in Brown vs. Massachusetts, 144 U. S., 579, says:

"In order to give this court jurisdiction under section "709, of the Revised Statutes, to review, on writ of error, "a decision of the highest court of a State against a title, "right, privilege, or immunity claimed under the Consti- "tution of the United States, it must, as observed by Chief "Justice Waite in Spies vs. Illinois, appear on the record "that such title, right, privilege or immunity was specially "set up or claimed at the proper time, and in the proper "way."

123 U. S. 131, 181.

Baldwin vs. Kansas, 129 U. S., 52.

Murdock vs. City of Memphis, 87 U. S. (20 Wall). 591.

A motion for a hearing and a re-hearing was not the proper way to specially set up the title, right, privilege or immunity which they claimed under the Constitution of the United States.

To give the Supreme Court of the United States jurisdiction, the record in the cause must have evidence that a federal question has been decided against plaintiff in error and the certificate of the Chief Justice that such a question arose, and was decided against plaintiff in error, cannot supply the want of evidence in the record.

Felix vs. Scharnweber, 125 U. S., 59.

Gleason vs. Florida, 9 Wall., 779.

Adams Co. vs. B. and M. R. R. Co., 112 U. S., 127.

Chouteau vs. Gibson, 111 U. S., 200.

In 111 U. S. 200, Mr. Chief Justice Waite says: "From the beginning it has been held that to give us "jurisdiction in this class of cases it must appear affirmatively on the face of the record, not only that a federal "question was raised and presented to the highest court of "the State for decision, but that it was decided, or that its "decision was necessary to the judgment or decree rendered in the case."

III.

Although the record may show that this court has jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument.

The federal question is presented by the contention of plaintiffs in error that the constitutional amendment adopted by the State of Missouri on the first Monday of

November, A. D. 1890, is contrary to the Fourteenth Amendment of the Constitution of the United States. That the effect of said amendment is to deny them of the equal protection of the law and deprive them of their property without due process of law.

Judge Thomas A. Sherwood delivering the opinion of the Supreme Court of Missouri in banc in case of State vs. Jackson, 105 Mo., 196, declared the above mentioned constitutional amendment valid.

In Missouri vs. Lewis, 101 U. S. 31, Mr. Justice Bradley says: "We might go still further, and say, with "undoubted truth, that there is nothing in the Constitution "to prevent any State from adopting any system of laws "or judicature it sees fit for all or any part of its ter- "ritory."

Pace vs. Alabama, 106 U. S., 583.

In re Boggs, 45 Fed. Rep., 475.

Hurtado vs. California, 110 U. S., 534.

Hallinger vs. Davis, 146 U. S., 321.

Case of Kemmler, 136 U. S., 436.

In 110 U. S., 516, the court says: "Due process of "law in the latter (Fifth Amendment) refers to that law "of the land which derives its authority from the legisla- "tive powers conferred upon Congress by the Constitu- "tion of the United States, exercised within the limits "therein prescribed, and interpreted according to the "principles of the common law. In the Fourteenth "Amendment, by parity of reason, it refers to the law of "the land in each State, exerted within the limits of those "fundamental principles of liberty and justice which lie at "the base of all our civil and political institutions, and the "greater security for which resides in the right of the

"right of the people to make their own laws and alter "them at their pleasure."

On or about July 15th, 1892, Mr. Justice Harlan denied writ of error to Ed. Nolan in the case of State of Missouri vs. Ed. Nolan, the constitutional question being the validity of Constitution of Missouri by which its Supreme Court is divided into two divisions.

In the case of State of Missouri vs. Harry Duncan, a writ of error to the Supreme Court of Missouri was allowed by one of the honorable justices of this court, and on or about March 12th, 1894, the writ of error was dismissed.

Duncan vs. State, Vol. 14, Supreme Court Reporter, page 570.

The constitutional amendment which went into force on the first Monday of January, 1891, whereby the Supreme Court of Missouri was divided into two divisions and the number of judges increased to seven, has been in force for nearly four years, and during all that time the constitutionality of said constitutional amendment has never been questioned so far as we can learn in any civil case but this one. No member of this court has ever considered the constitutionality of said constitutional amendment a debatable question, and consequently they have never allowed a writ of error to the Supreme Court of Missouri in a civil case. When right to a writ was bottomed on the federal question presented by the claim that the above constitutional amendment of Missouri violates Fourteenth amendment to the Constitution of the United States, and when writ was allowed in the Duncan murder case it was dismissed by the court.

I respectfully submit that the writ of error should be dismissed or judgment should be affirmed.

T. J. Rowe

Attorney for Defendants in Error.

FILED
DEC 5 1894
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB, CHARLES BOBB, HENRY C. BAGOT ET AL., PLAINTIFFS IN ERROR,

vs.

DORSEY A. JAMISON, ADMINISTRATOR OF THE ESTATE OF CHARLES L. BOBB, DECEASED, AND JOHN H. BOBB, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Statements, Points and Brief of Plaintiffs in Error, on Motion of Defendants in Error to Dismiss the Writ of Error.

MICHAEL KINEALY,
Attorney for Plaintiffs in Error.

JAMES R. KINEALY,
Of Counsel.

In the Supreme Court of the United States.

No. 267.

OCTOBER TERM, 1894.

MARTHA E. BOBB, *et al.*,
Plaintiffs in Error,
vs.
D. A. JAMISON, Admr. and
JOHN H. BOBB,
Defendants in Error.

ERROR TO THE SUPREME COURT OF MISSOURI.

STATEMENT, POINTS AND BRIEF OF PLAINTIFFS IN ERROR ON MOTION OF DEFENDANTS IN ERROR TO DISMISS THE WRIT.

In the statement of defendants in error, made in their brief filed in support of their motion to dismiss the writ of error, so many material facts of record, relating to the peculiar organization of the Missouri Supreme Court, necessary to be considered on the objections made in that motion, are omitted or mistakenly set forth, that the plaintiffs in error cannot make that statement a basis for their argument or points. Not the least of those mistakes are the assertions, on page 3, of the brief of defendants in error that the

> "Plaintiff in error did not attempt to raise the federal question in the cause until the court gave its opinion and affirmed the judgment of the State Circuit Court, and the federal question was raised for the first time when plaintiffs in error filed their motion for a hearing and a re-hearing before the Court in banc—the last court in which any"

proceeding was had in this case in the Supreme Court of Missouri and the Court of which Judge Sherwood, appears by that statement, and

by the record to have been the Chief Justice, when the writ of error in this cause, was allowed. Even if we assented—which we do not—to the implied assertion that "Division Number Two" mentioned in the statement, was a "Court" within the meaning of Secs. 709, 999, 1003, of the U. S. Rev. Statutes, regulating the allowance of writs of error and the signing of citations in such a case as this at bar, yet it does not by any means follow, when the Constitution of the Missouri Supreme Court is understood, that the writ of error in this case should have been signed or the citation allowed by—or only by—the presiding judge of "Division Number Two." Again, there are *two* Federal questions presented by the record, as we contend, each presented at the proper time, and the consideration of one of them involves an examination of so many matters necessary to be considered on the point made by defendants in error, as to the proper allowance of the writ of error, that the avoidance of useless repetition becomes a matter of some importance and therefore we think it best before considering any of the questions raised by the motion, to give a short statement of the facts and points of the cause up to its appearance in this Court.

STATEMENT.

This suit was brought by defendants in error, in the Circuit Court of the City of St. Louis, against Henry C. Bagot, John C. Letcher, Charles Bobb and Martha E. Bobb, his wife, to subject two tracts of land, aggregating nearly thirty acres, in the City of St. Louis, (Rec. p. 3) to the payment of judgments obtained by them against Charles Bobb.

The petition was filed on April 4th, 1881, and alleged (Rec. pp. 3, 4, 5), that John H. Bobb and Charles L. Bobb (of whom defendant in error, Jamison, was administrator) and others were children of Charles Bobb and in a suit had obtained a decree against him on June 15th, 1878, in said Circuit Court, for certain sums of money, to be paid to each of them, by him; that one Burd owned the land described in the petition and executed a deed of trust of it to a trustee to secure certain notes for eight thousand dollars and interest given by Burd for money borrowed; that Charles Bobb bought those notes on February 16th, 1879, caused the trustee to sell the land under the provisions of the deed of trust and that he, Charles Bobb, at that sale, purchased the land in the name of Henry Bagot, to whom he had the conveyance made by the trustee; that, subsequently, Charles Bobb caused Bagot to convey the land to Letcher and caused this conveyance to be withheld from record with intent to hinder, delay and defraud his said creditors; that he caused said conveyances to be executed with the same intent, and that the land is the property of Charles Bobb.

The petition then for the first time alludes to plaintiff in error, Martha E. Bobb, in these words (Rec. 5): "that the defendant, "Martha E. Bobb, is the wife of the defendant, Charles B bb; that as plaintiffs are informed and believe, and therefore state, the said defendant, Martha E. Bobb, now claims and asserts that she is in truth and in fact the owner of the real estate hereinbefore described, and that she was in truth and in fact the owner of the notes secured by deed of trust under which said real estate was sold as hereinbefore set forth, and that the said real estate was bought in for her, and that she is now the equitable owner of the same, although said real estate now stands in the name of said John Letcher. Wherefore the plaintiffs make the said Martha E. Bobb a party defendant in this action."

No other allegation is made concerning Mrs. Bobb, but it is alleged that nothing has been collected on the judgments, and ends with a prayer for a sale of land to pay them (Rec. pp. 4, 5). On June 8th, 1881, the defendants in that suit, by their attorneys, Lee & Chandler, filed the following joint answer (Rec. 6).

"In the Circuit Court, City of St. Louis, June Term, 1881.

"Dorsey A. Jamison, as Administrator de bonis non of Charles L. "Bobb, deceased, and John H. Bobb, Plaintiffs,

vs.

"Henry C. Bagot, John Letcher, Charles Bobb, and Martha E. Bobb, Defendants."

11. Now at this day come the defendants herein, and for their answer to plaintiff's petition herein deny each and every allegation therein contained. Wherefore, having fully answered, pray hence to be dismissed with their costs.

LEE & CHANDLER,

Attorneys for Defendants.

The case practically lay dormant until October 4, 1886 (Rec. 6, 7), when, Letcher having died, an order was made to bring in his heirs as parties (Rec. 7, 8), and the cause again slept until October 15th, 1887, (Rec. 8, 9) when plaintiff in error, Martha E. Robb, filed the following separate and amended answer (Rec. 9):

ANSWER OF MARTHA E. BOBB.

IN THE CIRCUIT COURT, CITY OF ST. LOUIS.

D. A. JAMISON, Admr. et al., *Plaintiffs*,
vs.
H. C. BAGOT et al., *Defendants*.

No. 5604. Room 5.

"Now come defendant Martha E. Bobb and, by leave of Court, files this her separate answer to plaintiffs' petition, and admits that she does claim the property described in plaintiffs' petition, and says she is the true and sole owner thereof, and that neither defendants Bagot nor Letcher ever had any beneficial interest in said property, but merely held the legal title for short periods as trustees of, and for the sole use and benefit of, the defendant, and this defendant states that she has no knowledge or information sufficient to form a belief as to the truth of the facts stated in said petition."

M. KINEALY AND JAS. R. KINEALY,
Attorneys for Defendant Martha E. Bobb.

On October 25th, 1887, the cause came on to be tried (Rec. p. 16), and the plaintiff introduced evidence for the purpose of establishing the judgment, trustees' sale, and purchase by Bagot and conveyance to Letcher, but it was established by evidence not seriously questioned that Mrs. Martha E. Bobb bought the Burd notes and paid for them herself with her own money (Rec. 59, 60, 182, 183, 184, 185, 37, 38, 42, 43), derived in part from rents (Rec. 57, 186, 191,) of, and in part from sales of, land, her separate estate (Rec. 53 to 70), owned by her, of *record* since October 2d, 1862 (Rec. 73, 191, 71, 72), and which she paid for with money she claimed to have had at her marriage (Rec. 50–1–2), and no evidence was adduced to contradict her, and that the conveyance to her of the last-mentioned land

was drawn on November 4th, 1861 (R. 71), by defendant in error John H. Bobb (Rec. 68), the real plaintiff in interest in this cause, he having acquired all the interest of plaintiff in error Jamison (R. 221).

This disposed of every issue *raised by the pleadings*, and had the cause ended there, would have necessitated a decree for plaintiff in error Martha E. Bobb. But at this point arose one of the federal questions presented by this record: The defendants in error, without any allegation directed against Mrs. Bobb in the pleadings on which such evidence could be based, under favorable rulings of the Court, made against the continued objections of plaintiff in error Martha E. Bobb (Rec. 208, admission after "Close of Evidence, 73, 76, 77, 78, 100, 103, 105, 164, 205, 209, 222–3, 90, 91, 97, 35), and to which rulings her exceptions were duly taken and saved (Rec. pages last cited), introduced evidence tending to show that the real estate and property of which we have just been treating, owned by Mrs. Martha E. Bobb, were derived by her from her husband, Charles Bobb, for the most part as early as and before 1862, and were given or transferred by Charles Bobb to her with intent to defraud plaintiffs in error of payment of the claims out of which arose the decree in their favor, rendered June 15th, 1878, on which they based this suit (Rec. 51 to 59, 73, 76, 77, 78, 100, 103, 105, 164, and evidence offered on pp. 90 to 165).

The Circuit Court, on this evidence, found the land to be the property of Charles Bobb, and ordered it to be sold and the proceeds applied to the payment of the judgment claims of the defendants in error (Rec. 10, 11, 12, 13). In the decree the Court made the following finding in relation to Mrs. Martha E. Bobb (Rec. 13):

> "The Court further finds that after the institution of this suit the said Charles Bobb caused the said John Letcher to convey the aforesaid real estate to Martha E. Bobb, wife of Charles Bobb, by deed dated May 1, 1881, and recorded March 16th, 1882, in Book 677, page 18, of the Recorder's office of the city of St. Louis, which conveyance the Court doth find was without consideration and was made for the purpose of hindering and delaying the said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, in the collection of their said judgment, and the Court doth further find that said conveyance from John Letcher to Martha E. Bobb was and is fraudulent, null and void as to said John H. Bobb, John H. Bobb, assignee of Lucy G. Taylor, and Martrom D. Lewis, administrator of Charles L. Bobb, deceased."

By the admission of that evidence on an issue as to Mrs. Martha E. Bobb, of which, on the pleadings, as we will show by decisions of this and other courts, the Circuit Court had absolutely no jurisdiction,

and by this finding as to Mrs. Martha E. Bobb on that issue, also made without jurisdiction, and by the decree based thereon, we submit the Circuit Court, as far as lay in its power, sought to deprive the plaintiff in error, Mrs. Martha E. Bobb, of that property without due process of law, and made those rulings over her repeated and sufficient objections, duly made and saved by full exceptions to the Court's rulings taken at the proper time.

Plaintiff in error, Mrs. Martha E. Bobb, pleading with her husband, filed her motions for a new trial and in an arrest of judgment, in due time, (Rec. 208, 222), and asked for a new trial on the grounds, amongst others, that the Court admitted illegal and incompetent evidence offered by plaintiffs on the hearing of the cause against her objections, and that the findings and decree were against law and against the evidence, and should have been for her and for the reasons urged in support of her motion for a rehearing, (Rec. 209) and she asked for a rehearing on the grounds, amongst others, that the petition stated no cause of action against her, no relief ought have been granted against her on the petition and pleadings, and that the decree is not responsive to, or in accordance with, the pleadings in the cause, and operated as a surprise and injustice on her. Thes motions were overruled and the defendants in that suit, including Mrs. Bobb, appealed to the Supreme Court of Missouri.

Under the practice in Missouri, when this case was in the Supreme Court the errors were not separately assigned, and in the briefs filed on behalf of Mrs. Martha E. Bobb, it was complained and assigned as grounds of reversal of the decree as to her, in her "points" that on the trial the plaintiffs

> "abandoned the case stated in this petition, and without warning sprung a new case of fraud, which was not alluded to in his petition and was based on an entirely new theory," and that "the particular acts of fraud and the particular case on which recovery is sought must be fully stated in the petition," (Exhibits p. 7) citing numerous cases in support of this proposition from this and other courts and numerous authorities (see extracts from defendants briefs, certified from the Office of the Clerk of the Supreme Court of Missouri on file in this Court, and printed copy thereof on file here, marked "Exhibits," pp. 7 to 13). In the "Brief" it was complained that the "petition was

> "but a blind to conceal the real attack," (p. 7, last sent.) that she naturally expected that when plaintiff went to trial nearly eight years after he had taken her deposition and ascertained with the utmost minuteness the nature of her claim to the property without amending his petition by inserting any charges of fraud alleged to have been participated in by her, or of which she was the beneficiary, that he went to trial prepared to prove the case his petition set forth. Instead of

doing so, however, he entirely abandoned his pleading and proceeded as if his petition had set out a case of a fraudulent transfer of property to her by Charles Bobb, and the use of the property so transferred, as the means by which she acquired her title to the property described in the record in this cause." "This course has been emphatically condemned and in no case have the Courts sustained a decree obtained by such proceedure." (Exhibit p. 8): that they attacked her title to her real estate, and to the funds owned by her when she bought the bond without any warning

"in the pleadings or elsewhere of his intention to make any such attack. (Exhibit p. 10): "that she was forced without warning or time for preparation to endure this "attack," and that the attack was "a trap and a surprise." (Exhibit p. 10), and many other representations of the same nature, and a very large number of authorities were cited to show that such practice was not tolerated by the Courts. (Exhibit pp. 12, 7, 8).

The cause was docketed in the Supreme Court of Missouri as No. 4,916, on page 29 of its October docket, 1890, the last case of the 19th day, the 20th day being Wednesday, November 5th (Rec. 263, 264). On December 15th, 1890, this cause, with others, was assigned to "Division No. 2" (Rec. 229), composed of Judges Gantt, Thomas and Macfarlane, who affirmed the decree of the Circuit Court by an opinion signed by Judge Thomas and concurred in by Judges Gantt and Macfarlane.

As will be seen, further on, an application to avoid the effect of correct this ruling was made to the Supreme Court itself.

A consideration of the objection to the allowance of the writ of error and of the second federal question which, as we claim, is presented by the record, requires a short statement of the nature of the organization and practice of the Missouri Supreme Court.

In the first place, it is allowable in the Supreme Court of Missouri that the opinion and decision of the Court be written and announced as his official act with others of the Judges, by a Judge who at the time of hearing the argument was not even elected to the office of Judge of that Court. This, as is shown by the transcripts from the records of the Supreme Court of Missouri on file (Exhibits pp. 14, 15), was done in the case of John H. Bobb (one of the defendants in error in this case) vs. Charles Bobb (one of the plaintiffs in error) et al., 89 Mo. 411, in which the opinion of the Court was rendered by Judge Black, who was not a Judge of that Court when the case was argued.

That case was argued on December 8, 1882, when Judges Sherwood, Ray, Hough, Henry and Norton composed the Court: was decided June 4, 1883, a rehearing

was granted June 21, 1884, and it was reheard on oral arguments and briefs on October 22, 1884. At the general election on the Tuesday next following the first Monday in November (Const. of Mo., Art. 8, Sec. 1) being November 4, 1884, Judge Francis M. Black was elected Judge of the Supreme Court in place of Judge Ray: In January, 1885, Judge Black presented his commission and took his seat as such judge, and on January 26, 1885, within three weeks after he became judge, he rendered the opinion deciding the case which had been under the consideration of the other judges from December 8, 1882. (Exhibits pp. 14, 15).

Hence from the mere fact that the case was *heard* by Judges Gantt, Thomas and Macfarlane, we had no right to presume that the decision would not be participated in or announced by another of the Judges, making a majority of the Court, assuming that the assignment of a particular civil cause, arbitrarily made, to three designated Judges, and also a minority of the Judges of the Court, for final determination, would be an unconstitutional act which we could not, in advance, impute to the Court. In fact, we had a right to presume that the Court would obey the Constitution, and that a failure to do so in any particular case was an inadvertence which it would rectify when the error was brought to its attention, for up to that time the question involved in our case had not been presented to that Court.

By a constitutional amendment adopted by the people of Missouri in 1889, which was considered, on another question, by this Court in the cases of the State vs. Duncan, State vs. Hayes, &c., the Supreme Court of Missouri, previously composed of five Judges, was to be composed of seven Judges thereafter. The amendment directs that those seven Judges shall constitute "the Supreme Court," but may be divided into two divisions, one of four Judges, constituting Division No. 1, and one of three Judges—the youngest—constituting Division No. 2 and it is provided by Sec. 1, that:

> "The divisions shall sit separately for the hearing and disposition of causes and matters pertaining thereto, and shall have concurrent jurisdiction of all matters and causes *in the Supreme* Court, except that Division No. 2 shall have exclusive cognizance of all criminal cases pending in said *Court*: Provided that a cause therein may be transferred to the *Court* as provided in Section 4 of this amendment. *The division of business* of which said divisions have concurrent jurisdiction *shall be made as the Supreme Court may determine.*"

When the Judges of a division are equally divided in opinion or one dissents, or the decision so orders or a federal question is involved, the cause "shall be transferred to the *Court* for its decision."

> "The *Court* may dispense with the divisions when in *its* opinion business will justify it, and may restore them again when they think them required."—(Rec. 253, 254.)

Though the *Court* had power under the amendment to "determine" how

> "the division of business of which said divisions have concurrent jurisdiction shall be made,"

yet it has adopted no rules determining that matter or prescribing what particular class of cases should go to one division or what to the other (Exhibit pp. 1 to 6—Rules in force between April term 1877 and April term 1891, Mo. Sup. Ct.), whether real estate cases or cases of any other particular nature or affecting any particular class of citizens or coming from particular territory should go to a named division, so that the citizen, under the constitutional amendment, as practically administered by the Court, has no warning where his case will go for final hearing, and, as will be seen from the references to cases in our brief, the decisions of the two divisions, on very many vital principles of law, are so diametrically opposed that the result of a law-suit, in too many cases, has an added uncertainty arising from the particular division into which, by chance or caprice, it may happen to fall.

After the rendition of the opinion in Division No. 2, in the case at bar, defendant in error Mrs. Martha E. Bobb filed two motions in the *Court*, as distinguished from the division (Rec. 245, 246, 251), for a hearing of the cause, alleging, among other matters, the unconstitutionality of an *arbitrary* assignment of her case to, and its final decision by, three Judges, whereby she was denied the equal protection of the laws and was deprived of her property without due process of law, contrary to the Fourteenth Amendment of the United States Constitution, and showing that had it not been for that arbitrary action she would have obtained a decree, as the vital point in this case had been decided contrary to the holding of Division No. 2, by the Judges of Division No. 1, who constituted a majority of the *Court*, in the case of Reed vs. Bott, 100 Mo. 62 (Rec. 246 to 251). In this motion Mrs. Bobb likewise alleged as a reason, that by the action of the trial Court and of the Judges of Division 2, in decreeing a sale of her property on evidence heard on an issue not made in the pleadings, and "sprung on her without notice, warning or charge," she was deprived of her property without due process of law; also in violation of the Fourteenth Amendment (Rec. pp. 246, 251). The second motion was to transfer the cause to the Court for hearing also on the ground that two federal questions were involved (Rec. 252). Those motions were overruled, and Mrs. Bobb and the other defendants below sued out a writ of error to this Court, which was allowed and the citation signed by the Chief Justice of the Supreme Court of Missouri, Judge Sherwood (Rec. p. 260). The writ of error is set forth in the printed abstract, on pages 261, 262.

Plaintiffs in error, in their assignment of errors, set forth the federal questions, which they contend appear on the record substantially as already stated (Rec. pp. 256, 257, 258, 259).

POINTS AND AUTHORITIES.

I.

The Chief Justice of the Supreme Court of Missouri had authority to allow the writ of error to that court by which this cause was brought to this court and to sign the citation.

U. S. Rev. Stats. Secs. 1003, 999, 709, 706.
2 Foster's Fed. Prac. (2nd Ed.) p. 1003.
Polleys vs. Black River Co., 113 U. S.
Gelston vs. Hoyt, 16 U. S. 246.
Atherton vs. Fowler, 91 U. S. 143.
Kanose vs. Martin, 56 U. S. 198.
Butler vs. Gage, 138 U. S. 52.
Amendment to Const. of Mo. Secs. 1, 4 and 5, printed in Laws of Mo. of 1889, p. 322.
Laws of Mo. of 1893, p. 16, Secs. 1.
Rev. Stats. of Mo. 1889, Chap. 46, Art. 2.
Same, Chap. 32.
Same, Secs. 1952, 1953, 1954, 1955, 1957.
Exhibits on file in this Court, p. 6.

II.

In order to raise the Federal question in the trial court, when it can or ought to be raised there, it is not necessary to invoke the protection of the United States Constitution or amendments thereof, *eo nomine*. If the ruling necessarilly deprives the citizen of any of those rights protected by the constitution, an objection to the ruling, duly made, seems sufficient.

Spencer vs. Merchant 125 U. S. 345; 31 L. Ed. 765 Citing.
"Bridge &c vs. Hoboken Land & I. Co. 60 U. S. 116."
"Murray vs. Charleston 96 U. S. 432, 442."
"Furman vs. Nichol 75 U. S. 44, 56."
"Chicago L. Ins Co. vs. Needles 113 U. S. 574, 579."
M. & O. R. Co. vs. Tennessee 153 U. S. 486.

III.

The acts of the Court or Judge by which a citizen is deprived of his property without due process of law, are the acts of the State, within the purview of the fourteenth amendment of the constitution of the United States.

Ex parte Virginia, 100 U. S. 339.
Ex parte Coles U. S. Supreme Court cited "*In re* Ah Lee" 8 Fed. Rep. 902 & *Ex parte* "Ulrich" 42 Fed. Rep. 597.
State vs. Doherty, 60 Me. 509.
Scott vs. McNeal, 154 U. S. 34.

IV.

A state cannot by its own act, legislative or otherwise make "due process" of law, anything it may see fit to declare such.

Davidson vs. New Orleans 96 U. S. 97.
Ex parte Virginia 100 U. S. 339.
Ulman vs. City of Baltimore 72 Md. 587 and the large number of cases cited from this Court and other Courts on page 592 of the same.
State vs. Doherty, 60 Me. 509.
Scott vs. McNeal, 154 U. S. 34.

V.

Plaintiff in error, Martha E. Bobb, will be deprived of her property without due process of law by the decree of the Circuit Court, if it be permitted to stand, because the decree is founded on a charge, and on evidence admitted against her objection in support of a charge, necessarilly implied in the decree, that her husband Charles Bobb had, between the years 1856 and 1875, made conveyances of real estate and gifts of personal property to her with the intent to hinder, delay and defraud his creditors, as to which charge no allegation was made in the pleadings and of which charge she had no warning or notice until it was sprung on her at the trial. The *Court was without jurisdiction* to render such a decree.

Ex parte Coles, U. S. Supreme Court, cited in In re Ah Lee 5 Fed. Rep. 902.
Crockett vs. Lee 20 U. S. 522.
Windsor vs. McVeigh 93 U. S. 274.
Munday vs. Vail, 34 N. J. (Law) 418.

Murray's Lessees vs. Hoboken Land and Imp. Co., 59 U. S. 270.
Davidson vs. New Orleans, 92 U. S. 97.
Huber vs. Reilly, 53 Pa. St. 112.
Tomlinson vs. McKaig et al., 5 Gill. 256, 269 citing.
Grignow vs. Astor, 43 U. S. 338.
Bailey vs. Ryder, 10 N. Y. 363.
Scott vs. Toledo, 36 Fed. Rep. 385.
Burton vs. Plattner, 10 U. S. App. 657.
Green vs. Briggs, 1 Curtis Rep. 326-7.
Hey Sing Ieck vs. Anderson, 57 Cal. 251.
Kennard vs. Louisiana, 92 U. S. 480.
In re Frederich, 51 Fed. Rep. 747.
Stephenson vs. Brunson, 83 Ala. 455.
Bartmeyer vs. Iowa, 18 Wall. (U. S.) 129.
State vs. Doherty, 60 Me. 509.
Co. of San Mateo vs. So. P. R. Co., 8 Am. and Eng. R. R. Cases 27.
Garland vs. Littlewood, 1 Beav. 527.
Coope vs. Carter, 2 De Gex. M. and G. 228, 229.
Green vs. Bradly, 7 Beav. 274.
Jones vs. Morrell, 2 Simon N. S. 249, 250.
Scott vs. McNeal, 154, U. S. 34.
Pennoyer vs. Neff, 95 U. S. 714.
Other vs. Smurthwaite, 5 Eq, Cas. 442–443.
State *ex rel* Larkin vs. Ryan, 70 Wis. 676.
Rees vs. City of Watertown, 86 U. S. 107.
State *rel* Merriam vs. Ross, 25 S. W. 947.
Jeck vs. Anderson, 57 Cal. 252.
Kuntz vs. Sumption, 117 Ind., 1 (2 L. R. A. 655).
Philadelphia vs. Miller, 49 Pa. St. 448.
Harwood vs. North Brookfield, 130 Mass. 561.
Stewart vs. Palmer, 74 N. Y. 183.
Bennett vs. Buffalo, 17 N. Y. 383.
Noonan vs. City of Lawrence, 130 Mass. 161.

VI.

The action of the Supreme Court of Missouri in this cause, and the amendment to the Constitution of Missouri adopted in 1889, concerning the creation of divisions of the Court, as construed and acted on by the Supreme Court of Missouri in this cause, by which this cause was designated and assigned to be finally determined by three judges of the seven composing the Court, by an arbitrary or capricious act of the Court, not based on rule or classification, and not requiring the exercise of judicial discretion, denied plaintiff in error, Martha E. Bobb, of the equal protection of laws, and deprived her of her property without due process of Law.

Yick Wo. vs. Hopkins, 118 U. S. 356 and cases cited on p. 374.

Bells Gap. R. Co. vs. Commonwealth of Pa. 134 U. S. 232.

Leeper vs. Texas, 139 U. S. 462.
35 L. Ed. 225.

Westervelt vs. Gregg, 12 N. Y. 212.

Giozza vs. Tiernan, 148 U. S. 657.

Dibrell vs. Morris' heirs, 15 S. W. 87.

City of St. Louis vs. Marshel, 99 Mo. 475.

VII.

Both Federal questions were raised at the proper time and in the proper place.

Blount vs. Spratt, 113 Mo. 48.

Cases cited under point "5" *ante*.

1 Rev. Stats. of Mo. Sec. 2047, p. 541.

Campbell vs. Carroll, 35 Mo. App. 640 and cases cited.

State *rel* Merriam vs. Ross, 25 S. W. 947, 952.

BRIEF.

We submit that the Chief Justice of the Supreme Court of Missouri had authority, to issue the writ of error and sign the citation.

Under the Constitution of Missouri as amended there is but one Supreme Court. All through the amendment the Supreme Court is

spoken of as *the court*, having divisions, created at its will and dissolved at its will (Rec. p. 257.) whenever "in its opinion business will justify it" (Rec. 257, Sec. V).

The Revised Statutes of Missouri, which came into operation the year following the adoption of the Constitutional amendment, in Article 2, Chapter 46, treating of the Supreme Court and Courts of Appeal, speak all through of the *Supreme Court* and never once allude to the Divisions.

Chapter 32 of the Revised Statutes of Missouri, going into operation with the adoption of the constitutional amendment, provides, (Sec. 1952), for the appointment of a clerk of the "Supreme Court" by the "Supreme Court" or a majority of the judges thereof; Sec. 1953 provides for filling vacancy in the office of clerk, by such court or a majority of them in a vacation. Sec. 1954 provides that the office of the clerk of the "Supreme Court" shall be kept in the "Supreme Court" building at Jefferson City and Sec. 1955 provides for the employment by the Clerk of two deputies and of additional clerical assistance, whenever in the opinion of the judges of the "Supreme Court" their employment may be required, etc. Sec. 1974 of the Revised Statutes provides for the keeping by the clerk at his office, the records, papers, seal and property belonging to his office, and that he shall there transact his official business.

By an act of the General Assembly of the state of Missouri, approved March 31, 1893, (Laws of Mo. 1893, p. 116) two years after the adoption of the amendment, provision is made for the "judges of the Supreme Court" (and Courts of Appeals) to direct the number of cases to be docketed by the clerks for the next succeeding term of the Supreme Court, and further provides that "A copy of the docket shall be printed in the two Courts of Appeals and county wherein "such Supreme Court" and Courts of Appeal shall be held at least forty days before the commencement of the term." It is to be remembered in this connection that "the Courts of Appeal" spoken of in these sections are independent appellate tribunals not in any way connected with the Supreme Court or its divisions. In this cause the transcript certified as of the records of "the Supreme Court" by the Clerk of "the Supreme Court" from the office of "the Supreme Court" (Record pages 263, 264), and the mandate itself (Exhibits on file in this Court page 6) purports on its face to be issued out of "the Supreme Court" of Missouri certified by the Clerk of "the Supreme Court" of Missouri directing the enforcement of a judgment "in the Supreme Court of Missouri" "on affirmance of judgment by the Supreme Court of Missouri." This is shown by the mandate itself the certified copy of which has been filed in this Court and is printed in full, on page six of the exhibits, also filed here.

Thus it will be seen that the Statutes and the constitutional amendment *eo nomine* speak of but one "Supreme Court," which has one

office and one clerk, who keeps all the records of that Court, and it will further be seen that the amendment carefully distinguishes between a hearing before a Division of the "Supreme Court" and a hearing before the Court (Rec. pp. 249, 250). Hence there is officially, in Missouri, of that name, but one "Supreme Court," with one clerk, and one Chief Justice, and that one Supreme Court, by its clerk, keeps the records of the "Supreme Court," is the Court of which the judgment on error or appeal is officially denoted to be judgment, is the court which issues writs and process and is the court in which the records of appealed causes remain. On the other hand a division has no clerk, keeps no records, has no fixed term of existence, and no power of self preservation. It is merely the evanescent creation of the "Supreme Court," whose breath creates it and dissolves it at pleasure, and, really, the Division has no attribute of a court save to hear arguments and render opinions which the constitutional mendment makes final decisions of the Supreme Court.

The "Divisions" exercise few functions other than those accorded by the laws of Colorado to the Commissioners of the Supreme Court of that State, who heard cases and gave opinions and whose decisions were practically the decisions of the Supreme Court. Yet in the case from Colorado of "Butler vs. Gage, 138 U. S., 52: this Court held that when the Supreme Court of the State is composed of a chief justice and several associates, and the judgment complained of, was rendered by such Court, the writ could only be allowed by the *chief justice of that court* or by a justice of this Court" (p. 56). It does not seem to have been supposed that the writ of error should have been allowed or the citation signed by the particular commissioner who gave the decision as to which error was assigned.

It is also important to remember in this connection that *the last proceeding of Plaintiffs in Error* in this cause before it was brought to this Court *was the filing of motions in the "Supreme Court"* (Rec. p. 246) *addressed to that Court and not to any division of it*, and that the last act of that Court in reference to the cause was to issue the "Mandate" of "the Supreme Court"—and not of a division of it—to the Court which tried the cause and rendered the decree (Exhibits p. 6).

The record being in "the Supreme Court" of Missouri the writ of error was properly directed to that Court. This has been held by this Court in many cases.

In Gelston vs. Hoyt, 16 U. S., 246.

A writ of error was issued to the Court of Impeachments and Errors of the State of New York.

The Court of Errors had decided the case and remitted the record to the Supreme Court of New York, its inferior Court, with its mandate

to execute the judgment. And in its return to the writ of error from the Supreme Court of the United States it set forth this fact.

The question was presented to the Court whether the cause could be brought up by a writ of error directed to the Supreme Court of New York and the Court decided that the writ—"may then be directed to "either Court in which the record and judgment, on which it is to act, may be found. The judgment to be examined must be that of the highest Court of the State having cognizance of the case, but the record of that judgment may be brought from *any Court in which it may be legally deposited*, and in which it may be found by the writ."

In Atherton et al, vs. Fowler et al, 91 U. S., 143.

The Court decided that the writ may go either to the highest Court of the State or to the Court where the record is found. The Court alluding to the writ of error also says:

"That writ is to operate on the Court having the record and not upon the parties."

"If the highest Court of the State contains the record, the writ should go there."

The citation may be signed by the chief justice of the Court to which the writ of error is addressed.

2 Foster's Fed. Pr. (2nd ed.,) 1003, 2nd par.

In writs of error from this Court to some Courts, the statute provides for the *allowance* of the writ of error as well as for the signing of the citation.

U. S. Rev. Stats. Sec. 706; 23 U. S. Stats. 355; Sec. 2; but the "allowance" of writs to the State Court seems to be required independently of any statutory authority.

U. S. Rev. Stats. Sec. 709, 999, 1003.

Bartmeyer vs. Iowa 81 U. S. 27.

Gleason vs. Florida 76 U. S. 779.

As the act of the Judge who signs the citation: There being no statutory requirement for the "allowance" of a writ of error to a State Court apart from the signing of the citation, the allowance, by the Judge who signs the citation, ought to be deemed sufficient, when the object of an allowance in such case is merely to have a guarantee that reasonable cause exists for the issuance of the writ.

Bartmeyer vs. Iowa 81 U. S. 27.

But in this case the defendants in error make no objection because of the signing of the *citation* by the Chief Justice of the Missouri Supreme Court, and have, as far as that question is concerned, waived all objection.

If then, it is the practice for the Judge who signs the citation to "allow" the writ of error, we submit that the defendants in error are not in a condition to urge an objection to the allowance of the writ alone. For all those reasons we submit that the writ in this cause, should not be dismissed because allowed by the Chief Justice of the Supreme Court of Missouri.

In addition, we submit to the consideration of the Court, the fact that the Supreme Court of Missouri was not in session when this writ of error was allowed. (Exhibit p. 16.)

It does not seem necessary to invoke the protection of the Federal Constitution, or its fourteenth amendment *eo nomine*, in the lower court. If the ruling necessarily deprives the citizen of the protection of the Federal Constitution, an objection to the ruling setting forth wherein the protection is denied, seems sufficient; and this requirement was fully complied with, by plaintiff in error, Martha E. Bobb, all through the proceedings in the case at bar.

In Spencer vs. Merchant, 125 U. S. 345, 31 L. Ed. 765, the objection was that a certain act of the Legislature was unconstitutional and void, but no mention of the U. S. Constitution was made in the objection (p. 765, coll.) *until the plaintiff came to assign error in the United States Supreme Court* (p. 765, col. 2) and then it was alleged that the proceedings were in violation of the U. S. Constitution and deprived parties of property without due process of law. The Court says:

> "He thus directly and in apt words, presented the question whether he had been unconstitutionally deprived of his property without due process of law, in violation of the first section of the Fourteenth Amendment to the Constitution of the United States as well as of Art. 1, Sec. 7, of the Constitution of the State of New York; *and no specific mention of either Constitutional provision* was necessary in order to entitle him to a decision of the question *by any Court* having jurisdiction to determine it." The adverse judgment of the Supreme Court affirmed by the Court of Appeal of the state necessarily involved a decision against a right claimed under the Fourteenth Amendment of the Constitution of the United States, which this court has jurisdiction to review."
>
> "Bridge Pr. vs. Hoboken Land and I. Co., 68 U. S. 116.
>
> "Murray vs. Charleston, 96 U. S. 432, 442.
>
> "Furman vs. Nichol, 75 U. S. 44, 56.
>
> "Chicago L. Ins. Co. vs. Needles, 113 U. S. 574, 579."

In M. & O. R. Co. vs. Tennessee, 153 U. S. 486, 495, 496, the objection raised was that a state law impaired the obligation of a contract, and it was held that this objection raised a Federal question, with out more. See cases cited on page 496.

Plaintiff in error, Mrs. Martha E. Bobb, more then complied with the duty prescribed in the above cases, for after saving her objections all through the trial she invoked the protection of the Fourteenth Amendment *eo nomine*, in the Supreme Court of the State. (Rec. pp. 249, 250, 251, 252, 253, 254.)

The third point we make is, that within the purview of the Fourteenth Amendment of the Constitution of the United States, the *State* deprives a citizen of his property without due process of law, when he is deprived of his property without due process of law by the acts or rulings of a court or officer of the State; and the fourth point which we make is that a state cannot by its own act, legislative or otherwise, make "due process of law" of anything that it may see fit to declare such. These two points may be considered together, and it is hardly necessary to do more than cite the authorities. As far as the fourth point is concerned, the authorities go to the extent that the Legislature, or the state by any legislative enactment or otherwise, whether under guise of the rule of practice, or as a positive prohibition, cannot take from the citizen, his property, without due process of law, and that it is immaterial whether the state by the legislative act, or any other action of its people, or by the ruling of its judge, or the act of its officers, in effect, deprives the citizen of his property without due process of law; the protection of the Fourteenth Amendment extended to the aggrieved citizen, cannot be evaded by any such proceeding or denied because of it.

In Davidson vs. New Orleans, 96 U. S. 97, the question is put and answered in this manner, in substance:

Can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition of the States is of no avail, or has no application where the invasion of private rights is effected under the forms of State legislation.

This Court has held that:

> "Whoever, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition, and as be acts in the name and for the state, and is clothed with the state's power, *his act is that of the state.* This must be so, or the constitulional prohibition has no meaning when the state has clothed one of its agents with power to annul or evade it." See—

Ex parte Coles, U. S. Supreme Court, opinion by Mr. Justice Strong, cited in "In Re Ah Lee," 5 Fed. Rep. 902, and in *ex parte* Ulrich, 42 Fed Rep. 597.

In *ex parte* Virginia, 100 U. S. 339, this Court thus states the rule:

> "We have said the prohibitions of the Fourteenth Amendment are addressed to the States. A State acts by its legislature, its executive or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdistion the equal protection of the laws. Whoever by virtue of public position under a State government, deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name of the State and is clothed with the State's authority, his act is that of the State. This must be so, or the Constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it?" (Pp. 346, 347).

And in Ulman vs. Mayor & Co. of Baltimore, 72 Md. 587, the Court declared (p. 592, 2d parag.) that:

> "Due process of law is not confined to judicial proceedings. The Article of the Constitution is a restraint on the legislative as well as on the executive and judicial powers of the government, *and cannot be so construed as to leave the* Legislature free to make any process, due process of law, by its mere will and pleasure. *Murray's* Lessee et al. vs. Hoboken Land & Imp. Co., 18 How. "(U. S.)" 272. There would seem to be no doubt that notice, in all such cases as the present, is required to constitute due process of law, and is essential to the validity of the assessment." Citing:
>
> "Walston vs. Nevin, 128 U. S. 578.
>
> "Palmer vs. McMahon, 133 U. S. 660.
>
> "Spencer vs. Merchant, 125 U. S. 345.
>
> "Hagar vs. Reclamation Dist. No. 108, 111 U. S. 701.
>
> "Davidson vs. New Orleans, 96 U. S. 97.
>
> "McMillan vs. Anderson, 95 U. S. 37.
>
> "Stuart vs. Palmer, 74 N. Y. 183.
>
> "Overing vs. Foote, 65 N. Y. 263.
>
> "City of Philadelphia vs. Miller, 49 Pa. 440.
>
> "Butler vs. Supervisors of Saginaw Co., 26 Mich. 22.
>
> "Thomas vs. Gain, 35 Mich. 155.

"Patten vs. Green, 13 Cal. 325.
"Darling vs. Gunn, 50 Ill. 424.
"State &c. vs. Drake, 33 N. J. 194.
"Cooley on Taxation, 265."

The fifth point we make, is that plaintiff in error, Martha E. Bobb, will be deprived of her property without due process of law by the decree of the Circuit Court, if it be permitted to stand, because the decree is founded on the charge—and on evidence admitted against her objection in support of the charge—necessarily implied in the decree, that her husband, Charles Bobb, had between the years 1856 and 1875 made conveyances of real estate and gifts of personal property to her with the intention to hinder, delay and defraud his creditors, as to which charge no allegation was made in the pleadings and of which charge she had no warning or notice until it was sprung upon her at the trial. We contend that the Court was without jurisdiction to render such a decree. The issue raised by the petition was simply whether Charles Bobb purchased the Burd notes with his own money and, with those notes, purchased the property in question at the sale under the Burd deed of trust. That was the single issue presented by the pleadings, save as to the claim of Mrs. Bobb to own the property. This claim was brought in question, in the petition, by the allegation that Mrs. Bobb claimed to own the Burd notes and to have, herself, purchased the property. At the trial it was conclusively shown that the means used in purchasing the notes were those of Mrs. Martha E. Bobb; that she had bought the notes herself; that she paid for them with money, which she had obtained from the proceeds of property that had been hers for nearly twenty years, during which time it had stood of record in her name, and she had been exercising absolute ownership of it. As between her and all the world, until the Court declared her title voidable at the instance of her husband's creditors, if it were voidable, that property was hers, and when she, on that trial, came forward and proved that with the proceeds of that property, so long enjoyed by her under undisputed title, she has purchased the Burd notes and Burd property, she had done all that devolved upon her, under the pleadings as they then stood. This we submit is familiar law (Other vs. Smurthwaite, 5 Eq. Cas. 442–3). But at this point, the creditor of Charles Bobb introduced evidence, against Mrs. Bobb's objection, tending to show that she, Mrs. Bobb, acquired the property enjoyed by her for so many years before, in fraud of his rights as a creditor and that he then and there elected to hold her title to that property voidable, and to have it so declared by the Court in that proceeding. Of this intention of the creditors of Charles Bobb, to have this declaration from the Court on her title to that property, she admittedly, had no notice, and when the facts concerning the creation of the indebtedness of Charles Bobb claimed to be due that creditor, and the fixing of this

indebtedness at the amount stated in the decree, rendered against him (In the cause of John H. Bobb vs. Chas. Bobb, et al. reported in 89 Mo. p. 411), and set forth on pages 156 and following of record in this cause are considered, it will be easy to see the enormous disadvantage at which she was placed by the want of this notice of the creditor's intention in regard to her title. And that decree and the interlocutory decree rendered in same cause against Charles Bobb, set forth in the same record on page 150 and following (I allude to the printed record) shows that the largest part of that indebtedness consisted of compound interest imposed by the Court as a penalty on Charles Bobb on June 15, 1878, (record page 156) nineteen years after Mrs. Martha E. Bobb acquired the real estate (Rec. p. 71) from which all her money and property was eventually derived, and over twenty-two years after she acquired the means to pay for it, (Rec. p. 51, 52, 53) and there is no pretense that Mrs. Martha E. Bobb had any knowledge or notice of these alleged acts of Charles Bobb, because of which this penalty was imposed. Not only that, but the evidence clearly tends to show that all through the time in which these transactions entailing that penalty, were being had by Charles Bobb, he was solvent and possessed ample property to pay any indebtedness that would arise under the circumstances stated in the decree, even with the compound interest, (Rec. pp. 191, 201, 205) but most certainly without it. Therefore in order to fully meet this charge of the fraudulent acquisition by her, of this property, which she owned and from which she derived means to pay for the Burd notes and the Burd property, and on every question involved in it, it was necessary to adduce evidence showing the solvency of Charles Bobb at certain times extending over a period of twenty years, that is between 1856 and 1875, the date of the purchase of the Burd notes; to show the consideration which she gave for the property which she first acquired and whence it emanated; and to trace down through a period of nearly twenty years the changes and accumulations of that property and of its proceeds, which involved, as the evidence showed, an inquiry into each individual one of quite a number of purchases, loans, investments and reinvestments of her means. Of course, it goes without saying that it would have been utterly impossible for any human being, suddenly confronted in the midst of the trial, with such a charge as this raised against Mrs. Bobb, to produce the evidence, oral and documentary, necessary to show the various transactions involved in her defense.

She and her counsel were brought into court and kept there to answer to a charge during a trial which occupied all their time and attention and disabled them from hunting up evidence, or procuring proofs on the new charge sprung upon her, or even counseling upon the proper proof. Is this surprise cured by the fact that if she had had the evidence there, if she had apprehended the nature of the charge being proved as the evidence came in, her proofs in refutation would be heard.

If you put her, as it were, in the dock and when the evidence of the new charge is adduced, do you satisfy the requirement of "due process" by saying—bring up your witness, if you have any, but you cannot leave court to get them, nor can you take time to think of what you want to prove, nor of whom you can get to prove it? Can you create the situation in which she cannot, in fact, move in preparation of her defense, and then tell her if she had any defense it would be heard, and for that reason she has had the benefit of "due process of law?" To say to Mrs. Bobb that she had an opportunity on that trial to introduce such evidence, when the circumstances rendered her powerless to procure it for the want of notice of the intention to make the charge, and that that so-called opportunity dispensed with the necessity of notice by which she would be enabled to obtain this evidence, and that, by such a proceeding, she has had the benefit of "due process of law," is we submit placing an interpretation on "due process of law," which renders the phrase a mockery, and which is unsupported by authority.

We submit that the authorities defining the due process of law necessary in such a case, hold that notice is necessary; that such notice consists in setting out the charges in the pleadings, and particularly in the complaint or petition, so specifically as to inform the person charged of the grounds upon which it is sought to take his property, and that these charges have to be filed or brought to the notice of the party to the charge, within such reasonable time as the law or the practice of the Court has fixed, or declared to be sufficient to enable him to answer them; that without such notice of these charges the Court acquires no jurisdiction to hear evidence upon them, to try them or to decree in respect to them; and that should the Court without such notice proceed to hear evidence upon such charges and make a decree sustaining them, its action is not merely erroneous, but is not due process of law, and therefore is void. because infringing upon the r ghts of the citizen secured by the Fourteenth Amendment of the United States Constitution. The soundness of these several propositions is, we submit, clearly shown by the authorities we have cited under this point.

We do not think it necessary in this case, in this Court, to preface the citations from authorities with any general definition of what constitutes "due process of law," except as it appears in the cases cited. We will confine ourselves to citing authorities on the three branches of the subject which appear to us to be presented in this case, as thus defining the relation that must exist in a judicial proceeding between the allegations of the petition, the proof adduced and the decree rendered, so as to constitute "due process of law." We have grouped the authorities under this point so as to bring the various branches consecutively before the court, showing first what the authorities uniformly hold; second, in connection with the last, how

far a failure to limit the proofs adduced and the decree rendered, to the allegations of the petition, is not due process of law, and third, in connection with the other two, so far as it can be separated from them, what constitutes the "notice," without which there is not due process of law.

In our brief in the Supreme Court in Missouri (Exhibits pages 7, 8, 9, 10, 11, 12,) we cited a large number of authorities to show that, as laid down in 2 Daniel's Ch. Pr. 856, (Perkins Ed.) the invariable rule is, that a case proved "must be substantially the same case as that which he has stated upon the record, for a court will not allow a party to be taken by suprise by a case, if proved on the other side different from that set up by him in the pleadings."

This is but summarising the decisions on that question, both in this country and in England, and such, prior to the decision of the case at bar, was the ruling of the Supreme Court of Missouri then composed of four of the present judges of division number one of that court and Judge R. D. Ray, in the case of Reed vs. Bott, 100 Mo. 62, and we cannot now recall any case in which the Supreme Court of Missouri, prior to the decision of the case at bar, adopted a different ruling. The authorities following, also show that a contrary practice is not due process of law, and many of those decisions upon this branch of the subject hold that a judgment, the result of such proceeding, is void, as the court had no jurisdiction to grant relief, on an issue, of which notice was not given in the pleadings. They in effect hold as we contended in our brief in the Supreme Conrt of Missouri (Exhibit page 10), that judgments obtained by surprises or traps sprung in the course of judicial proceedings, are not the result, nor a part, of due process of law.

The rule which we invoke was applied in England, in a case, in which the allegations of the bill so closely resembles those made in reference to Mrs. Bobb, in the petition of the case at bar, that we specially call the Court's attention to it. It is the case of Other vs. Smurthwaite, 5 Eq. Cas. 442, 443, in which it was alleged in the bill, against the defendants, as here it is alleged against Mrs. Bobb, that they "claimed an interest" in the property, and under that allegation it was sought to prove a case of fraud against them, just as was attempted in this case against Mrs. Bobb, but the Court would not permit it to be done; saying:

> "Here is a general charge as to defendants' interest....
> "The defendants will go to the hearing in utter ignorance of what it is the plaintiff proposes to prove, on the simple allegation that they have some interest."

In Crockett vs. Lee, 20 U. S. (Wheaton) 522.

The points in the case and the law are thus stated: "Counsel "for the appellant contends that so much of this testimony as respects

"the vagueness of Camerons *location* must be disregarded, because "neither its vagueness nor its certainty has been put in issue Lee has "not averred in his bill, nor alleged in his answer, that this *location* "is vague, nor has he anywhere, or in any manner questioned its "validity."

"The principle advanced by the appellant's Counsel cannot be controverted. No rule is better settled than that the decree must conform to the allegations, as well as to the proofs in the cause" [p. 525]. But Counsel for appellant contended "That terms are used in the pleadings which are equivalent to a direct allegation that Cameron's *location* is too vague to be sustained" [p. 525.]

And the Court sets forth the allegations made thus:

"In his answer to Crockett's bill he says that he does not admit "that the survey has been made agreeable to *location*" * * * *

"The bill filed by Lee is equally defective in this respect * * "he * subjoins that Crockett claimed the land in dispute by virtue "of said improvement and having caused that same to be surveyed "contrary to location, and to law, and was to interfere with his "[Lee's] claims, had obtained a prior patent, &c."

"This allegation, like that in the answer, draws into question only "the survey. It does not controvert the location or entry" [p. 526.] Thus, it will be seen, that the Court held *that mere inference or allusion in the pleading is not sufficient*, but that the averments calling for proof and constituting a notice to the party must be *clear, direct and positive*. And the Court does not regard this, merely, a question of erroneous practice, but does hold it to be a fatal defect within the inhibition of the rule concerning due process of law, for it says in relation to it:

"The counsel for appellant says it would be monstrous, if, after "the parties have gone to trial on the validity of the entry and have "directed all their testimony in the Circuit Court, to that point, "their rights should be made to depend in the Appellate Court on a "mere defect in the pleadings, which had entirely escaped their ob- "servation in the Court where it might have been amended, and the "non-existence of which would not have varied the case."

"The hardships of a particular case would not justify this tribunal in prostrating the fundamental rules of a Court of Chancery: rules which have been established for ages, on the soundest and clearest principles of general utility. If the pleadings in the cause were to give no notice to the parties or to the Court of the material facts on which the right asserted was to depend, no notice of the points to which the testimony was to be directed, and to which it was to be limited; if a new case might be made out in the proof, different from that stated in the pleadings, all will perceive the

confusion and uncertainty which would attend legal proceedings, and the injustice which must frequently take place. The rule that the decree must conform to the allegations. as well as to the proofs of the parties, is not only one which justice requires, but one which necessity imposes on the Courts. We cannot dispense with it in this case" [p. 527].

And this was the ruling in a case wherein the Court found that the merits were with the other party, the Court saying:

"But as this reversal is not in the merits of the case, and the Court is rather inclined to the opinion that the decrees on the merits are right, no final decree will directed in either cause, but each will be remanded to the Circuit Court, with directions to permit the parties to amend their pleadings" [p. 528].

In Garland vs. Littlewood, 1 Beav. 527, a bill was filed by legatees against executors, and the Court in due course made an interlocutory decree and an order for accounting before a Master. The Master, in his report, besides stating an account, found that the executors were guilty of unlawful neglect and default. On motion for a final decree, the complainant sought to have the defendants charged for the loss occasioned by this neglect and unlawful default found by the Master. The Court held that these findings could not be considered for that purpose, giving as reasons that:

> "The plaintiff took only the common decree for an account and the proofs prepared and adduced from evidence accordingly in the Masters office. I think nothing could be more unjust than whilst the parties were performing their duties under this decree, another case should be allowed to be made against them; they would probably have proceeded differently in the Master's office if they had been aware that it was the object of the plaintiffs ultimately to charge them for their willful default; I cannot, therefore, charge the trustees in the way asked by the plaintiffs, it would be a surprise upon them."

In the cases of Coope vs. Carter and Coope vs. Townsend, 2 De Gex. M. & G. 228, 229, were proceedings against trustees by beneficiaries and a prayer for an accounting of moneys had and which but for neglect or default might have been obtained and for interest etc. A decree was made and the case referred to the Master for an accounting and the Master was to be at liberty to state any circumstances specially with regard to the matters aforesaid as he should think fit."

During the hearing, proofs were offered before the Master as to the alleged misfeasance of the trustee by which the trustee was sought

to be charged for loss to the estate. The Master refused to make a finding on this question because not a matter referred to him, and so reported. On hearing, on further directions, exceptions were sustained to the action of the Master, holding that the inquiries should be directed in such a way as to call the defendant's attention to the fact to be investigated or in other words, that surprises cannot be sprung upon a party and that he must have due notice of the charges which he is called upon to defend, so that he may be enabled to do it.

In Green vs. Bradly, 7 Beav. 274, the Court made a similar ruling and in Jones vs. Morrell, 2 Simon N. S. pp. 249-250, the Court pointedly declares that such is the only practice to be tolerated in Equity Courts.

In "Foster vs. Goddard, 66 U. S. 518," the Court holds that

> "In equity proceedings the proofs and allegations must agree. A party can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved."

To the same general effect is the ruling in Grossholtz vs. Newman, 88 U. S. 488.

In Bailey vs. Ryder, 10 N. Y. 363, the Court held:

1. No decree can be made in favor of a complainant on ground not stated in his bill.

2. In proceedings in equity, if fraud is not alleged in the pleadings, no proof of it can properly be received.

3. When a creditor's bill charged certain defendants with holding land in trust for a judgment debtor who had advanced the purchase money and procured title to be taken in their names, and it appeared by the proofs that the lands were held in trust for the children of the judgment debtor, such children being also parties, it was held that under the allegations of the bill the lands could not be reached by the creditor. That the basis of the bill (a trust in behalf of the judgment debtor) was disproved, and the complainant could not assume that the transaction was fraudulent against himself, not having so alleged in his bill.

The defendant, Mr. Ryder, answered, stating that he had the land purchased for the use and benefit of his children, and that they were held for that purpose by the defendant trustees, and the Court held that

> "when the fact set up by a defendant be controverted, the defendant must prove it; and the complainant may examine witnesses to disprove it; but when the fact set up by the defendant is made out, either by proof or the admission of the complainant, and destroys his title to relief, it is not

admissible for the complainant, after the fact is made out, to impeach it on a ground not taken in his bill and on a ground not arising from the issue between the parties." (P. 370.)

Complainant should have amended his bill and stated the facts on which he meant to impeach it.

"The rule is explicit and absolute that a party must recover in chancery according to the case made by his bill or not at all, *secundum allega* as well as *probata*."

In Huber vs. Reilly, 53 Pa. St. 112, the Court says, defining due process of law:

"It ordinarily implies and includes a complainant, a defendant and a Judge, *regular allegations*, opportunity to answer, and a trial according to some settled course of judicial proceeding. It must be admitted there are a few exceptional cases. Prominent among these are summary proceedings to recover debts due to the government, especially taxes and sums due by defaulting public officers." (P. 117.)

In Windsor vs. McVeigh, 93 U. S. 274, this Court declares that:

"Though the Court may possess jurisdiction of a cause, of the subject matter and of the parties, it is still limited in its modes of procedure and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law." (P. 282).

* * * * * * * * *

"So a departure from well-established modes of procedure will often render a judgment void, * * * The decree of a Court of Equity upon *oral allegations, without written pleadings*, would be an idle act, of no force beyond that of an advisory proceeding of the Chancellor. And the reason is, that the Courts are not authorized to exert their power in that way." (P. 283.)

Munday vs. Vail, 34 N. J. (Law) 418, involved the validity of a decree in an equitable proceeding by a creditor to have a trust deed declared void as to him. The Court in which the proceeding was held not only did so, but declared the deed void as between the trustee and the *cestui que* trust, although no such issue was made in the pleadings. This decree was attacked in the case of Monday vs. Vail, and the Court held that:

"The deed of trust in question, as it regards the parties to it, was not by any one called in question; the defendants to this chancery suit did not ask for any adjudication upon their rights, and when, consequently, the Court undertook to decide and conclude such rights, such act was, clearly, *coram non judice*, and was consequently void." (P. 424.)

The Court further held

"that *in order to make a decision conclusive* not only the proper parties must be present, but that the Court must act upon the property according to the rights *that appear upon the record;* I refer to theauthority of Lord Redesdale.

"Gifford vs Hart, 1 Sch. & Lef. 408.

"Gore vs. Shackpole, 1 Dow. 30.

"Colclough vs. Strum, 3 Bligh R. 186.

"In Curtis vs. Price, 12 Ves. 102, Sir William Grant appears in a *collateral* proceeding to have looked into a decree to see how far it had been warranted by the matters in litigation." (Pp. 424, 425.)

In *re* Frederich 51 Fed. Rep. 747, defendant was convicted of murder in the first degree. On appeal the Supreme Court reversed the judgment and remanded the cause with direction to the Court to sentence for murder in the second degree. Held unconstitutional, but the Court in treating of the charge, etc., holds that "an indictment

"is sufficient to support a judgment for any grade of offense, necessarily included in the principal crime charged. The office of an indictment, however, is to raise an issue. A pleading which *clearly* and *distinctly* alleges all the facts essential to constitute the lesser offenses included within the highest suffices to tender an issue as to each fact and as to each offense."

"Even a judgment in proceedings strictly *in rem* binds only those who could have made themselves parties to the proceeding, and who had notice, either actually, or by the thing condemned, being the first seized into the custody of the Court. The Mary 13 U. S. 9 Cranch, 126, 144 (3: 678, 684); Hollingsworth vs. Barbour, 29 U. S. 4 Pet. 466, 475, (7: 922, 926): Pennoyer vs. Neff, 95 U. S. 714, 727 (24: 565, 570). And such a judgment is wholly void, if a fact essential to the jurisdiction of the Court did not exist."

In Corwithe vs. Griffing, 21 Barb, 9, Commissions in partition in their distribution embraced land not in the petition and the Court con-

firmed the report, but the judgment was held to be a nullity "as the jurisdiction was confined to the subject matter set forth in the petition."

The foregoing authorities show how far the evidence and the decree must be supported by allegations in the bill or petition, so as to give notice to the party affected. The authorities following hold that proceedings in which such notice is not imparted are not due process of law.

In Co. of San Mateo vs. So. Pac. R., 8 Am. & Eng. R. R. Cas. 27.

The Court holds: "It is significant that the guarantee against the "deprivation of property without due process of law is contained in the "clause which guarantees against a like deprivation of life and liberty, "and it means that there shall be no proceedings against either without "the observance of all the securities applicable to the case recognized "by the general law, by those principles which are established in all "constitutional governments for the protection of private rights. Notice "is absolutely essential to the validity of the proceedings in any case, "it may be given by personal citation, and in some cases it may be "given by statute, but given it must be in some form." And see the concurring opinion of Sawyer, C. J.

Burton vs. Platter, 10 U. S. App. 657, (53 Fed. Rep. 901) was a suit in replevin. Defendant gave a forthcoming bond on which judgment was rendered against the sureties for the value of the property, etc., without any hearing other than that had as to the plaintiff's right of possession, and the value of the property without notice to the sureties. The Court declared the law to be that:

> "It is a principle that lies at the foundation of all just government, that no man shall be deprived of his life, liberty or property without due process of law." "Chancellor Kent says: the better and larger definition of due process of law is, that it means law in its regular course of administration through Courts of Justice. 2 Kent's Commentaries p. 13."

The Court states the facts and then proceeds to set forth wherein due process of law was wanting in the proceedings, in these words, (p. 663):

> "Nothing can better illustrate the injustice and irregularity of this proceeding than the statement of these facts. *No notice of the ground on which the judgment was to be rendered*, no opportunity to contest their execution of the bond or their liability upon it, was given to any of these interveners" (the sureties) "until after the hearing was concluded and the Master's report filed. To *all these* they were

> entitled as a matter of right by the rules and forms established *by the Courts for the* protection of private rights. No rule is more salutary or better settled in the Courts than that one may not bring and try his suit upon one cause of action and recover a judgment or decree upon another. A judgment or decree to be *valid* must be according *to the allegation* and the proofs."

In Murray's Lessees et al. vs. Hoboken Land & Imp. Co., 59 U. S. 270, an action grounded on proceedings under a treasury "distress warrant," this Court thus defines *due process of law* in the judicial determination of private controversies as distinguished from those as relating to public debtors."

> "For though "due process of law" generally implies and includes *actor, reus, judex, regular allegations, opportunity to answer,* and a trial according to some settled course of judicial proceedings, (2 Inst. 47-50: Hoke vs. Henderson, 4 Derv. N. C. Rep. 15; Taylor vs. Porter. 4 Hill, 146; Van Zandt vs. Waddell, 2 Yerger, 260; State Bank vs. Cooper, Ibid. 599; Jones' heirs vs. Perry, 10 Ibid. 59; Green vs. Briggs, 1 Curtis, 311), yet this is not universally true. There may be, and we have seen that there are cases under the law of England after the *Magna Charta,* and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, land and goods of certain public debtors without any such trial." (Id. p. 280).

The only instance, however, given by the Court, *in which due process of law* can be apparently dispensed with, in a suit between parties private is where there is a claim of or under, a public right arising from the action of the executive power upon a matter committed to its determination by the Constitution and laws. In such a case the action of the executive is held conclusive (id. p. 284-5).

In Stephenson vs. Brunson, 83 Ala. 455, the question arose under a statute requiring as to a proceeding to determine right of property in a stray, that the owner

> "must notify the taker and satisfactorily establish his claim before a Justice of the Peace of the county, either by his own or the oath of another person,"

and the Court held:

> "That by a fair and reasonable interpretation of the statute the party claiming the stray must notify the taker, not only of his claim, but also of the time, place, and before what Justice he will establish it.

> * * * It is a fundamental principle of a constitutional right that every person shall have notice of any judicial proceeding instituted for the purpose of divesting him of his property. *Without notice there is not due process of law.*"

Jeck vs. Anderson, 57 Cal. 252, was a process under a statute providing that parties fishing with seines, etc., should be fined and the same destroyed. The plaintiff was convicted of the offense and the seines seized with them when arrested were thereupon destroyed by defendant. The Court held the destruction unlawful, as a deprivation of property without due process of law, holding, of course, the act of the Legislature to be unconstitutional, and the Court in its opinion after an examination of the authorities cited its conclusion in these words:

> "It follows that so much of the statute under consideration as authorizes defendant to arbitrarily seize and destroy or sell the property of the plaintiff for alleged forfeiture *without judicial proceedings for its condemnation or* monition or NOTICE, *actual* or *constructive*, *to its owner* of the CHARGES for which the forfeit was restrained and of the time and place for determining them was unconstitutional and void and afforded no protection to the defendant by the detention of the property in question."

Lowery vs. Rainwater, 70 Mo. 157, in which police officers under the authority of an act of the Legislature destroyed gambling implements found in the use of persons convicted of gambling. The Court held that the act was illegal and the law permitting it unconstitutional, declaring that

> "forfeiture of the rights of property cannot be adjudged by legislative act, and confiscation without a judicial hearing after due notice would be void, as not being due process of law."

It is a fundamental principle, that before a person can be deprived of the right [illegible] by judicial suit, he must have notice and reasonable opportunity to be heard in defense of his rights; notice or means of knowledge is an essential element in every proceeding which affects rights of persons or property.

Philadelphia vs. Miller, 49 Pa. St. 448.

The rule is of universal application and is founded on justice.

Harwood vs. North Brookfield, 130 Mass. 561.

As to the words "Law of the Land," the exposition of these words, as they stand in Magna Charta, as well as in the American Constitution, has been that they require "due process of law."

* * * "Lord Coke, giving the interpretation of these words in Magna Charta, 2 Inst. 50. 51, says they mean due process of law, in which is included *presentment* or *indictment* and being brought in to answer *thereto*. And the jurists of our country have not relaxed this interpretation. (Hoke vs. Anderson, 4 Der. R. 15; Taylor vs. Porter, 4 Hill's R. 146, 147, 3 Story Com. on Const. 661; 2 Kent, 13, N. Greene vs. Briggs et al., 1 Curtis Rep. 326–7.)"

In State *ex rel* Larkin vs. Ryan, 70 Wis. 676, under a statute authorizing summary proceeds against drunkards, a man was complained of to a Judge as being an habitual drunkard, brought before the Judge, summarily tried, convicted and imprisoned. Held imprisoned without due process of law. The only apparent defect was a trial (in chambers) before a Judge instead of a Court and want of notice.

Kennard vs. Louisiana, et al. 92 U. S. 480, was a case under a statute prescribing the trial of a right to hold an office as against an appointed and commissioned successor, on twenty-four hours' notice, and this Court held the law constitutional, because—"there is, in "effect, provision for a rule upon the incumbent to show cause why he refuses to surrender his office, and for service of this rule upon him. The incumbent was, therefore, to be formally called upon by a court of competent jurisdiction to give information to it, in an adversary proceeding against him, of the authority by which he assumed to perform the duties of one of the most important offices of the State. He was to be told when and where he was to make his answer. The law made it the duty of the Court to require this return to be made within twenty-four hours, and placed the burden of proof upon him. But it required that he should be called upon to present his case before the Court could proceed to judgment. He had an opportunity to be heard before he could be condemned. This was "process" and when served, it was sufficient to bring the incumbent into Court, and to place him within its jurisdiction." (P. 482).

In matters of revenue the Courts are more lax in their requirements as to notice than in judicial proceedings to settle private rights, but even in them notice is indispensible.

In Kuntz vs. Sumption, 117 Ind. 1, (2 L. R. A. 655), a proceeding for the assessment of taxes in which it was claimed that no proper notice was given to the party, and he was thereby deprived of his property without due process of law. The statutes require concerning notice of the board of equalization, that two weeks previous notice of the *time, place and purpose* of such meeting should be given in a

newspaper of general circulation, etc. The Court held (last parag. of opinion but one) that "the notice

> "does no more than inform the public that the board will be in session at the designated time and place, and no one is bound to act upon the notice further than to present complaint or resist general changes in the levy. Certainly no one is bound to know that a complaint will be prefered against him, affecting his individual rights. If one tax payer is bound to keep watch during the session of the board, so are all, and the result would be that the meetings of the board would be thronged with tax payers, or else their rights be at the mercy of the board. The organic law, to which all statutes must yield, does not intend that such a thing shall ever occur, for it requires notice to each person, thus individual property rights may become the subject of investigations and finally adjudication. This is a fundamental principle ruling all the departments of government. A decision of a judicial nature conclusively deciding upon individual property rights of the citizen and imposing a burden upon him can only be given in a proceeding of which, before a final and conclusive judgment is reached, the citizen has notice; *for without such notice there cannot be due process of law.*" (Last parag. of opinion).

In Rees vs. City of Watertown, 86 U. S. 107, the Court treating of a proceeding to compel the defendant to pay a claim under certain peculiar circumstances, says:

> "The proceeding supposed, would violate that fundamental principle contained in Chapter twenty-ninth of Magna Charta, and embodied in the Constitution of the United States, that no man shall be deprived of his property without due process of law; *that is, he must be served with notice of the proceeding, and have a day in Court taking his defense*," (p. 122) citing Westervelt vs. Gregy, 12 N. Y. 209.

The Court then speaks of some local usage in the New England States affecting suits against a town by which collection of the judgment may be made by execution against any of the inhabitants, but as any inhabitant may appear and defend the suit and appeal from the judgment, the proceeding was held in New England due process of law. But even with that right accorded, the rule was not approved by this Court, but held to be merely a local ruling, not adopted by, or applicable to the other States. (P. 123).

Stuart vs. Palmer, 74 N. Y. 183, was a case of an assessment for improvements and the Court in holding that the citizen can not be deprived of his property in such a case without due process of law, says:

> "We should say that notice of proceedings in such cases and an opportunity for a hearing of some description, were matters of constitutional right." (P. 194).

A law imposing an assessment for a local improvement, without notice to *and* a hearing or an opportunity to be heard on the part of the owner of the property to be assessed, has the effect to deprive him of his property without due process of law and is unconstitutional:

> Stewart vs. Palmer, 74 N. Y. 183.
>
> Bennett vs. Buffalo, 17 N. Y. 383.

In Scott vs. Toledo, 36 Fed. Rep. 385, a proceeding to enjoin the City of Toledo from taking real estate belonging to complainant under ordinance. The one notice given of the proceeding was the publication of a resolution of the council that it was necessary to levy upon and extend the avenue by appropriating the necessary lots along the proposed street, "but neither the resolution nor the notice gave complainant thereof furnished any information as to how or in what manner the

> "city council proposed or intended to secure the appropriation of the lands required, ...nor of the way in which the costs and expenses ....were to be met or by whom paid." The Court held that the Legislature may prescribe the kind of notice and mode in which it shall be given, *but it cannot dispense with the notice*," and they held that the proceedings *were without due process of law* under the Fourteenth Amendment of the United States Constitution.

In the following cases the Courts hold that without pleadings stating facts constituting a cause of action as to the matters on which the Court decrees, the Court has no jurisdiction of the *res* and hence cannot make a valid decree.

The case of Grignon Lessee vs. Astor, et al, 43 U. S. 338, is cited in Tomlinson vs. McKaig, et al, 5 Gill 256, on page 269, thus:

> "In Grignon vs. Astor, 2 How. 43 U. S. 338, "the same Court (the Supreme Court of the United States)" declared: "That if the petitioner presents such a case in his petition that, on a demurrer the Court would render judgment in his favor, *it is an undoubted case of jurisdiction.*" The converse of this bill must be true, and if the bill presents such a case, that on a demurrer the judgment would be against the complainant, *it is conclusive upon the question of jurisdiction.*" (P. 269). ...." It is the allegations in the bill which confer jurisdiction and which determine the power of the Court. (P. 276).

> ....."It has been properly said that the true test of *jurisdiction* will in all cases be found in the determination of the question whether a demurrer will lie to a bill."

In the case of the State *ex rel.* Merriam vs. Ross (Mo., March 24th, 1894), 25 S. W. 947, a petition was filed in a suit and a receiver appointed, &c. The Supreme Court, on an application for a writ of prohibition to prevent further proceedings in the suit, declared them all void and without jurisdiction, and prohibited both Court and receiver from further action in the matter, giving, as a reason for its ruling, that the petition did not state

> "a cause of action, either at law or in equity, in which as incident thereto a receiver might be appointed. The filing of that petition no more instituted an actual controversy between contending suitors in Court than would the filing of a copy of the Lord's Prayer. It laid no foundation whatever for the exercise of the jurisdiction of the Court to appoint a receiver, unless some ground for the exercise of that jurisdiction can be found other than an actual pending controversy in the Court which undertook its exercise." (P. 952, 1st col.)

These cases, we submit, show clearly that we are supported by authority in our contention that the decree of the trial Court and the judgment of the Supreme Court of Missouri affirming it deprived plaintiff in error, Mrs. Martha E. Bobb, of her property without due process of law.

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6. The action of the Supreme Court of Missouri in this cause and the amendment to the Constitution of Missouri adopted in 1889, concerning the creation of divisions of the Court, as construed and acted on by the Supreme Court of Missouri in this cause, by which this cause was designed and assigned to be finally determined by three of the seven Judges composing the Court by the arbitrary or capricious act of the Court, not based on rule or classification and not requiring the exercise of judicial discretion, denied plaintiff in error Martha E. Bobb of the equal protection of the laws and deprived her of her property without due process of law.

The question raised in this case has not, we submit, been yet decided by this Court. We do not, for the purposes of this case, claim that the Fourteenth Amendment to the Constitution of the United States, in any of its provisions, would be infringed on, even by the amendment to the Missouri Constitution under examination in this case, if the Supreme Court of Missouri, under the power conferred on it in Section 1 of that amendment, in the words,

> "The division of business of which said divisions have concurrent jurisdiction shall be made as the Supreme Court shall determine,"

had made a classification of the cases coming to the Court, whether based on territorial lines, on the nature of the questions involved or on the classes of citizens to be affected by amendment, and by rule adopted and announced allotted, not individual cases, but the classes of cases to one division or other, so that the arrangement would be a judicial determination operating on all and placing the citizens of each class on an equality as to the tribunal who should decide on their causes. We will assume that such a rule, adopted and promulgated. might perhaps be within the power of the Supreme Court and would not be obnoxious to the Fourteenth Amendment, inasmuch as it would operate equally on all citizens of the same class and come within the doctrine of this Court in the cases of Duncan vs. the State of Missouri, 152 U. S. 377; the Spies case, and others. But the Supreme Court of Missouri has not taken any such course. On the contrary, it has by its action held those words to mean that it may select cases at random, without regard to any rule, without the exercise of any judicial discretion evinced by an orderly fixed procedure, purely at the caprice, pleasure or whim of its members, and send this cause to Division 2 and that to Division 1.

As was held in the case of "Yick Wo. vs. Hopkins," 118 U. S. 356, and the cases therein cited (p. 374), the practical effect of the mode of construing and administering a law or provision may show that denial of the protection of the Fourteenth Amendment which would not be apparent from the wording of the measure itself. And in no case can the test be more successfully applied than in Missouri. It is not too much to say that the unfortunate construction given to the Missouri constitutional amendment by the Supreme Court of that State, which, of course, becomes a part of the amendment, as much as if originally embodied in it, has tended to impair confidence in judicial decisions, has rendered the law of the State on most important questions more or less conjectural, has made the work of the trial Courts more onerous and rendered it more difficult for the counsellor to advise his clients on many important legal questions, with any confidence in his advice proving correct when the time shall arrive to test it. For, during the session of the Supreme Court, the law on vital questions is liable to change, alternately, by decisions of the different divisions from month to month, and the St. Louis and Kansas City Courts of Appeals are required by the Constitution to follow the last decision of the Supreme Court on every question. And that this results from the operation of the amendment is shown by the fact that each division of the Court fairly observes the doctrine of *stare decisis* with respect to its own decisions. In proof of our statement in this regard we will cite a few instances out of many.

The case of Reed vs. Bobb, 100 Mo. 62, decided by judges who composed a majority of Division Number One has been already mentioned in this brief as being the case in which a rule was laid down

that would have been decisive of this cause in favor of Mrs. Bobb had it not been effectually departed from by Division Number Two.

In Gabriel vs. Mullen, 19 S. W. 1009, a majority of the judges of Division Number One held that under the Missouri Statute, a wife's separate property could be sold on execution for the debt of her husband contracted for family necessaries, although she was not a party to the suit, as she would have her day in court, which was directly contrary to the ruling of Division Number Two on the same point in Bedsworth vs. Bowman, 104 Mo. 441 or 15 S. W. 990.

In Pierce vs. Goerger, 103 Mo. 540, Division Number Two of the Supreme Court of Missouri decided that the testimony under oath of a married woman, unsupported by any other evidence, to the effect that she did not acknowledge a deed, should be given to the jury as against the certificate of the officer, and the verdict of the jury in favor of the woman, on this evidence, was sustained by Division Number Two in that case. By this decision, which unsettled many titles in St. Louis while it prevailed, the judges of Division Number One, of the same Court, in accordance with a great weight of authority throughout the country, refused to be bound, holding that although the acknowledgment might be impeached, yet "a clear and decided preponderance of evidence is required" to overcome the "recognized presumption of correctness," which attaches to the acts of the public officer, who took the acknowledgment. (Barrett vs. Davis, 104 Mo. 549).

In the case of Murnane vs. the City of St. Louis, 27 S. W. 711, which involved immense interests in the City of St. Louis, being the question of the mode of assessing for improvements in that City, the majority of Division Number One held the act under consideration to be unconstitutional. The majority of Division Number Two held the contrary.

In Larrabee vs. the Franklin Bank, 21 S. W. 747, Division Number Two held that a failing debtor making an assignment for the benefit of his creditors cannot give a preference in Missouri to another creditor by a separate instrument, executed on the same day. Division Number One, in Jaffray vs. Matthews, 25 S. W. 189, repudiated the doctrine and the authorities upon which it was founded.

In Spohn vs. Mo. Pacific Railroad Co., 26 S. W., pages 666 and 668, Division Number One laid down an important rule of evidence on which the case depended, directly contrary to the rule adopted by Division Number Two in the same case, reported in 116 Mo. 617.

In the case of the State vs. Loomis, the judgment of the Court below was affirmed by Division Number Two, in the opinion reported in 20 S. W. 332. This action was reversed by in full bench by the judges of Division Number One in an opinion reported in 20 S. W. 350.

In Hickman vs. Green, 22 S. W. 455, a most important ruling affecting real estate titles in Missouri was made in Division Number Two and was repudiated by a majority of the Judges of Division Number One and the judgment of the lower Court reversed, in the same case, in 27 S. W. 440.

In Burdick vs. Mo. Pacific Railroad Co., 27 S. W. 453, a majority of the Judges of Division Number Two dissent from the ruling of a majority of the Judges of Division Number One, on the same question.

In Girard vs. The St. Louis Car Wheel Co., decided June 19, 1894, and reported in 27 S. W., p. 648, the Judges of Division Number Two held an opinion diametrically opposed to the opinion of the Judges of Division Number One on an important question of evidence which was decisive of the case.

We will not further occupy the time of this Court in an examination of the contradictory views of the law held by these two bodies. We have merely cited some cases, out of many, to illustrate the practical working of this amendment of the Missouri Constitution. These are not all the cases that could be cited by any means, but they are sufficient to show that on many vital questions of the day, affecting the property rights of the citizen, there is a permanent conflict between the views of Division Number One and those of Division Number Two, and that the result of this conflict under the present organization of the Supreme Court of Missouri, is that the relief which the citizen may obtain is in a measure a matter of chance, depending on the division to which his case may be assigned, which itself is a matter of chance or caprice. Once the assignment becomes known it is not difficult to determine, in many cases, how vital points will be decided if those points have been decided by that division before, because the rule of *stare decisis* is rarely departed from in either division, and this very fact makes the uncertainty of the suitor in the practical working of the amendment all the more intolerable, as he realizes that chance or caprice, not orderly rule or settled principle, had controlled the result of his cause by fixing the tribunal by which it was to be heard.

In the case at bar, the vital point involved concerning the rights of Mrs. Martha E. Bobb was passed on by the judges who constituted Division No. 1. in the cause against Reed vs. Bott 100 Mo. 64, contrary to the rule adopted by the trial court in the case at bar and contrary to the ruling of Division No. 2. Had this cause been assigned to Division 1, Mrs. Bobb would have won her case, as it was, she lost it. Had just another such case been on the Supreme Court docket at the same time with the parties of the same class and occupying the same position on the pleadings and been assigned to Division 1, those two citizens, of like class and having causes of

action involving the same question, would have fared very differently indeed. Mrs. Bobb lost and the other would have won. Those suitors would not be equal before the law. The proceeding would not be due process of law under the authorities.

The case of:

Dibrell vs. Morris' Heirs' (Tenn.) 15 S. W. 87:

involved the power of the legislature to make classifications in a Statute concerning inheritance and descents, and the Court held (p. 92) that "Laws public in their character and otherwise unobjectionable may extend to all citizens or be confined to "particular classes (Cooley Con. Lim. 390), and it matters "not how few the persons are who may be included in the "class if all who are or may come into the like situation "and circumstances be impressed in the class. The law is "general and not partial ..... In the classification "made in Art. 1, Sec. 8, every one who is in or may come "into the situation and circumstance which constitute the "reason for and basis of the classification must be subjected "to the disabilities, duties, obligations and burdens imposed "by the Statute or it would be partial and void. And if "the classification is made under Art. 11 Sec. 8, every one "who is in or may come into the situation and circumstances "which constituted the reasons for and basis of the classification must be entitled to the rights, privileges, immunities and exceptions conferred by the Statute or it would be "partial and void * * * but the court goes on to declare "that those Statutory classifications must be natural and "not abitrary and cites a number of cases to show what are "considered arbitrary classifications and what are considered "natural, defining the arbitrary classification to be that unsupported by sufficient reasons and decided the act under "examination to be void, because the classification made by "it was purely arbitrary. This decision seems to be in "accord with the decision of the Supreme Court of the "United States in Barbier vs. Connolly, 113 U. S., 27."

The case of Yick Wo vs. Hopkins, 118 U. S., 356: Arose as a proceeding under ordinances of the Supervisors of San Francisco. This Court speaking of the objectionable features of those ordinances, says: "They seemed intended to confer, and actually do con"fer, not a discretion to be exercised upon a consideration "of the circumstances of each case, but a naked and arbitrary "power to give or with-hold consent, not only as to places "but as to persons." (p. 366). * * * "It is purely "arbitrary and acknowledges neither guidance nor re"straint." (P. 367.)

And the court states that it was intended to secure by the 14th Amendment, "that equal protection and security should be given to all
"under like circumstances in the enjoyment of their civil and
"personal rights * * * that they should have like access
"to the Courts of the country for the protection of their
"persons and property, the prevention and redress of
"wrongs and the enforcement of contracts."

"The ordinance therefore, also differs from the not unusual
"case where discretion is lodged by law in public officers
"or bodies to grant or with hold licenses to keep taverns or
"places for the sale of spirituous liquors and the like, when
"one of the conditions is that the applicant shall be a fit
"person for the exercise of the privilege, because in such
"cases the fact of the fitness is submitted to the judg-
"ment of the officer and *calls for the exercise of a discretion*
"*of a judicial nature*. [P. 368].

Again "it is, indeed, quite true that there must always be lodged
"somewhere, and in some person or body, the authority
"of final decision." * * * but the fundamental rights
"to life, liberty and the pursuit of happiness considered as
"individual possessions are secured by those maxims of
"Constitutional law which are the movements showing the
"victorious progress of the race in securing to men the
"blessings of civilization under the reign of just and equal
"laws, so that, in the famous language of the Massachusetts
"Bill of Rights, the government of the Commonwealth 'may
"be a government of laws and not of men'. For the very
"idea that one man may be compelled to hold his life or the
"means of living or any material right essential to the
"enjoyment of life, at the *mere will* of another, seems to be
"intolerable in any Country where freedom prevails, as
"being the essence of slavery itself". (p. 370). And the Court was here treating of the Act, not of the individual but of a body, showing that action by a body may be abitrary as well as the act of an individual and does not necessarily involve judicial discretion because the determination of several.

And the Court lays down a rule applicable to this cause at bar, in these words: "Though the law itself be fair on its face and im-
"partial in appearance, yet, if it is applied and administered
"by public authority with an evil eye and a n unequal hand,
"so as practically to make unjust and illegal discriminations
"between persons in similar circumstances, material to their
"rights, the denial of equal justice is still within the prohibi-

"tion of the Constitution. This principle of interpretation "has been sanctioned by this Court in (p. 374).

"Henderson vs. Mayor of New York, 92 U. S., 259:
"Chy Lung vs. Freeman, 92 U. S., 275:
"Ex parte Virginia, 100 U. S,, 339:
"Neal vs. Delaware. 103 U. S., 370:
"Soon Hing vs. Crowley, 113 U. S., 703:"

In Bells Gap Railroad Co. vs. Commonwealth of Pa., 134 U. S. 232;

The Court citing from the opinion in the cause of Barbier vs. Connolly, said that:

"The 14th amendment in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws' undoubtedly intended that there should be *no arbitrary deprivation* of life or liberty, or *arbitrary spoilation* of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property: that they should have like access to the courts of the country for the protection of their persons and their property, the prevention and redress of wrongs and the enforcement of contracts: that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon them than are paid upon others in the same calling and condition; and that in the adminstration of criminal justice no differen or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

In Giozza vs. Tiernan, 148 U. S., 657, The Court in considering the Fourteenth Amendment of the United States Constitution says that:

"Due process of law within the meaning of the amend- "ment is secured if the laws operate on all alike and do not "subject the individual to an *arbitrary* exercise of the powers "of government (citing) Leeper vs. Texas, 139 U. S., 462," and the Court in a prior paragraph states in reference to the same amendment that:

"Undoubtedly it forbids any *arbitrary* deprivation of life, liberty or property and secures *equal protection to all under like circumstances* in the enjoyment of their rights."

In Leeper vs. Texas, 139 U. S., 462, (35 L. Ed. 225):

> This Court holds "that due process is so secured by "laws operating on all alike and not subjecting the individual "to the *arbitrary* exercise of the power of government un- "restrained *in the established principles* of private right and "distributive justice."

In Westervelt vs. Gregg, 12 N. Y. 212:

due process of law, is held, under the *liberal* interpretation given to the phrase, to protect the life, liberty and property of the citizens against acts of mere *arbitrary* persons in any department of the government.

Had the Missouri Constitution not provided any appellate Court, of course we could not complain, under the decisions of this Court, as we, would fare alike with the other citizens, but the Constitution confers the right of appeals, and we only ask equality before that law and a regard for due process of law in the administration of it, and this has been arbitrarilly denied us by the action of the Supreme Court.

We therefore submit that our contention on this matter is sound and that this cause ought to be reversed because of the action of the Supreme Court of Missouri, in permitting this cause to be finally determined by the three Judges of Division Two.

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7. Both federal questions were raised at the proper time and in the proper place:

We submit that both federal questions were raised in time. As far as the point that Mrs. Bobb was deprived of her property without due process of law, by the rulings of the trial Court and the Missouri Supreme Court, is concerned, the point was saved from start to finish in the only way that it could be saved, that is by full objections and exceptions. The authorities do not require a special invocation of the protection of the Fourteenth Amendment *eo nomine*, as has been shown under point 2, and our objections to the introduction of evidence on an issue not raised in the pleadings were made to every question and our exceptions were duly saved to every ruling (Rec. pp. 208, 73, 76, 77, 78, 100, 103, 105, 205, 90, 91, 97), and in our motions for a new trial and in arrest of judgment we again made those objections (Rec. pp. 209, 222) and saved them as fully as the laws and practice of Missouri require. When we got to the Supreme Court of Missouri, we amplified our objections, to the same effect there and cited numerous authorities in support of them. (Exhib. pp. 7–13) and, besides, equity cases are substantially triable *de novo* in the Supreme Court of Missouri.

Blount vs. Spratt, 113 Mo. 48 20 S. W. 967.

In our motion for a hearing in the Supreme Court itself we renewed the same objections (Rec. p. 246), and again in our motion for a rehearing (Rec. p. 251); in fact, the record shows that from the first offer to introduce evidence on the trial up to the final termination of the cause in the Supreme Court by the action on our motion in the Supreme Court to have a hearing in that Court instead of in Division 2 (Rec. p. 246), we kept up the same objection.

Moreover, the petition stated no cause of action against Mrs. Bobb on the ground that her husband had conveyed to, or bestowed on, her property in fraud of his creditors, and under the practice in Missouri the objection to the evidence for that reason is never waived and may be made in the Supreme Court for the first time.

1. Rev. Stats. of Mo. Sec. 2,047.
   Batison vs. Clark, 37 Mo. 31.
   The State vs. Griffith, 63 Mo. 548.
   Campbell vs. Carroll, 35 Mo. App. 640.

Hence, in any view of the matter, we raised and saved our first federal question at the proper times and in the proper manner, under the rules laid down in the decisions of this Court.

We submit that the second federal question, as to the action of the Court in accepting and enforcing, as its judgment, the decision of the three Judges composing Division 2 of the Missouri Supreme Court, was also raised at the proper time and in the proper place. The amendment had been in operation only a year; the cases in the Court were docketed long before any assignment of this cause to Division 2 was made (Rec. pp. 263, 229); this case was assigned to Division 2 on December 15th, 1890 (Rec. 229), and submitted on April 24th, 1891 (Rec. 230); the construction given by the Supreme Court to the clause Section 1 of the Constitutional Amendment, providing that

> "*the division of business of which said divisions have concurrent jurisdiction* shall be made as the Supreme Court may determine,"

was not made known, or was a matter of conjecture; the presumption was that the Court would act constitutionally, and a constitutional construction could perhaps have been given the amendment under the provision we have just cited by rules classifying the cases to be assigned to each division according to the nature of the cases, the class of citizens, territorial limits or otherwise by which the persons affected in each class would be secured equality before the law, or by having a majority of the Court to participate in the decision, for, as we have shown, the Supreme Court of Missouri deems it a constitutional and proper practice to have a case decided by a Judge who does not sit at the hearing or is not even an incumbent of the judicial office

at the date of hearing (Bobb vs. Bobb, 86 Mo. 411; Exhib. pp. 14, 15; Statement *ante*), and therefore we had no right to assume, until the decision was actually announced by the three Judges, that such a violation of the constitutional right of the citizen would be permitted. And then we lost no time in objection in the most direct manner, by a motion directed not to the division, but to the "Court," and the whole Court, for a hearing of the case, as if no hearing had yet been had (Rec. pp. 246, 247, 248, 249, 250, 251).

We submit further that the Fourteenth Amendment is a beneficent provision, highly remedial, adopted in view of changed circumstances of the United States, adopted on the theory that in Maine or in Georgia each man is a citizen of one country, having minor political sub-divisions called States, which, while in the exercise of the powers they possess might infringe on the citizens' rights. It was intended to be a measure to protect the weak from the aggressions of the strong, and in this Court, before which the political sub-division is, we submit, only a citizen, when a controversy of this nature arises, the rule applicable to such measures when applied to mete out justice between individual citizens ought to still prevail, and the construction of the amendment should be liberal instead of strict.

We therefore respectfully submit that we are properly before this Court for a decision of this cause on its merits, or at least to the extent of obtaining a reversal of the judgment and a remand for a new trial, and that such should be the judgment here.

Respectfully submitted.

Michael Kinealy
Attorney & *Of Counsel for Plaintiffs in Error.*

J. R. Kinealy
Of Counsel

Office Supreme Court, U. S.
FILED
DEC 5 1894
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB, CHARLES BOBB, HENRY C. BAGOT ET AL., PLAINTIFFS IN ERROR,

vs.

DORSEY A. JAMISON, ADMINISTRATOR OF THE ESTATE OF CHARLES L. BOBB, DECEASED, AND JOHN H BOBB, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Copies of Exhibits filed in said cause in this Court by Plaintiffs in Error.

MICHAEL KINEALY, AND
JAMES R. KINEALY,
Counsel for Plaintiffs in Error.

RULES FOR THE GOVERNMENT

—OF THE—

SUPREME COURT OF MISSOURI.

Adopted at the April Term, 1877.

Chief Justice, his duty.

RULE 1. The Chief Justice shall superintend matters of order in the court room.

Motions to be written, signed and filed.

RULE 2. All motions in a cause shall be in writing, signed by counsel and filed of record.

Argument of Motions.

RULE 3. No motion shall be argued unless by the direction of the Court.

Taking record from clerk's office.

RULE 4. No member of the bar shall be permitted to take a record from the clerk's office without the written permission of some judge of the Court.

Diminution of record, suggestion after joinder in error.

RULE 5. No suggestion of diminution of record in civil cases will be entertained by the Court after joinder in error, except by consent of parties.

Application for certiorari.

RULE 6. Whenever a *certiorari* may be applied for, there shall be an affidavit of the defect in the transcript which it is designed to supply, and at least twenty-four hours' notice shall be given to the adverse party or his attorney previous to the making of the application.

Notices of writs of error.

RULE 7. All notices of writs of error, with the acceptance, waiver or return of service endorsed thereon, shall be filed with the clerk of this court, and be by him attached to the transcript in the cause, and shall be the only evidence that such notice has been given.

Reviewing instructions.

RULE 8. In actions at law it shall not be necessary for the purpose of reviewing in the Supreme Court the action of any Circuit Court or any other court, having by statute, jurisdiction of civil cases, in giving or refusing instructions, that the whole of the testimony given or excluded at the trial in the Court of first instance be embodied in the bill of exceptions, but it shall be sufficient for the purpose of such review that the bill of exceptions state that "evidence tending to prove" a particular fact or issue was given, and that an exception was saved to the giving or refusal of the instructions founded on it.

Bill of exceptions—whether there was evidence tending to prove an issue.

RULE 9. If the opposite party shall contend that there was no evidence tending to prove a fact or issue, and the Court of first instance shall be of opinion that there was such evidence, it shall be the duty of the Court to allow the bill of exceptions in the form stated in the last preceding rule, and then the other party shall be at liberty to set out in a bill of exceptions, to be prepared by him, the whole of the testimony supposed to be applicable to such fact or issue, and to except to the opinion of the Court that the same tends to prove such fact or issue.

Bill of exceptions—whether there was evidence tending to prove an issue.

RULE 10. If the Court of first instance shall be of opinion that there is no evidence tending to prove a particular issue or fact, the party alleging that there is such evidence shall tender a bill of exceptions, detailing all the evidence given and supposed to tend to the proof of such fact or issue, and except to the opinion of the Court that it does not so tend, which bill of exceptions shall be allowed by the Court by which the cause is tried.

Exceptions to admission or exclusive of evidence.

RULE 11. When an exception is saved to the admission or exclusion of any evidence, or the allowance or disallowance of any question, the question itself shall be stated in the bill of exceptions, or the substance of the evidence shall be fully stated.

Bill of exceptions in equity cases.

RULE 12. In cases of equitable jurisdiction the whole of the evidence shall be embodied in the bill of exceptions, unless the parties shall agree upon an abbreviated statement thereof.

Rule as to making out transcripts.

RULE 13. The clerks of the several Circuit Courts and other Courts of first instance, before which a trial of any cause is had, in which an appeal is taken or writ of error is sued out, shall not (unless an exception is saved to the regularity of the process, or its execution,

or to the acquiring by the Court of jurisdiction in the cause), in making out transcripts of the record for the Supreme Court, set out the original or any subsequent writ or the return thereof; but in lieu thereof shall say (*e. g.*) "summons issued October 2. 1871, executed October 5, 1871," and if any pleading be amended, the clerk in making out transcripts will treat the last amended pleading as the only one of that order in the cause, and will refrain from setting out any abandoned pleading as part of the record, unless it be made such by a bill of exceptions; and no clerk shall insert in the transcript any matter touching the organization of the Court, or any mention of any continuance, motion, or affidavit in the cause, unless the same be specially called for by the bill of exceptions.

Presumptions in support of bills of exceptions.

RULE 14. The only purpose of a statement, in a bill of exceptions, that it sets out all the evidence in a cause, being that the Supreme Court may have before it the same matter which was decided by the Court of first instance, it shall be presumed as a matter of fact in all bills of exceptions, for the future, that they contain all the evidence applicable to any particular ruling to which exception is saved.

Abstracts and briefs to be filed.

RULES 15 and 16 (as consolidated and amended at the April term, 1884). In all cases the appellant or plaintiff in error shall file with the clerk of this Court, on or before the day next preceding the day on which the cause is docketed for hearing, seven copies of an abstract or abridgment of the record in said cause, setting forth so much thereof as is necessary to a full understanding of all the questions presented to this Court for decision, together with a brief containing, in numerical order, the points or legal propositions relied on, with citation of such authorities as counsel may desire to present in support thereof.

The appellant or plaintiff in error shall also deliver a copy of said abstract, brief, points and authorities to the attorney for the respondent or defendant in error, at least *thirty* days before the day on which the cause is docketed for hearing; and the councel for the respondent or defendant in error shall, at least *ten* days before the day the cause is docketed for hearing, deliver to the counsel for appellant or plaintiff in error, one copy of his brief, points and authorities cited, and such further abstract of the record as he may deem necessary, and shall, on or before the day next preceding the day on which said cause is docketed for hearing, file with the clerk of this court seven copies of the same, and the evidence of the service of such abstracts, briefs, points and authorities, as above required, shall be filed by each party at the time of filing said copies with the clerk.

Citing authorities in briefs.

RULE 17. In citing authorities in support of any proposition, it shall be the duty of the counsel to give the names of the parties to any case cited from any report of the adjudged cases, as well as the number of the volume and the page where the same will be found; and, when reference is made to a passage in any elementary work

or treatise, the number of the edition, the volume, the chapter, section, paging and side paging shall be set forth.

Appellant's brief to allege errors complained of.

RULE 18. The brief filed on behalf of the appellant or plaintiff in error shall distinctly and separately allege the errors committed by the inferior court, and no reference will be permitted at the argument to errors not thus specified, unless for good cause shown the court shall otherwise direct.

Failure to comply with rules 15 and 16.

RULE 19. If any appellant or plaintiff in error, in any civil cause, shall fail to comply with rules numbered 15 and 16, the court, when the cause is called for hearing, will dismiss the appeal or writ of error; or at the option of respondent or defendant in error, continue the cause at the costs of the party in default.

Agreed cases.

RULE 20. Parties may, in the courts of first instance, agree upon any statement of the cause of action, the defense and the evidence, together with the rulings of the court thereupon and the exceptions saved to any ruling, which may intelligibly present to the Supreme Court, or any appellate court, the matters intended to be reviewed; and this statement, with a certificate by the judge before whom the cause was tried, that the same is a substantial history of what occurred at the trial of the cause, shall be treated as the record in all appellate courts, and the judgment rendered in the court of first instance shall be affirmed or reversed according to the opinion entertained by the Supreme Court respecting the same.

Motion for rehearing.

RULE 21. Motions for rehearing must be accompanied by a brief statement of the reasons for a reconsideration of the cause, and must be founded on papers showing clearly that some question decisive of the case, and duly submitted by counsel, has been overlooked by the court, or that the decision is in conflict with an express statute, or with a controlling decision to which the attention of the court was not called through neglect or inadvertence of counsel; and the question so submitted by counsel and overlooked by the court, or the statute with which the decision conflicts, or the controlling decision to which the attention of the court was not called, as the case may be, must be distinctly and particularly set forth in the motion, otherwise the motion will be disregarded. Such motion must be filed within ten days after the opinion of the court shall be delivered, and notice of the filing thereof must be served on the opposite connsel, but no motion for a rehearing shall be filed after the final adjournment of the court.

Motion for affirmance.

RULE 22. On motion for affirmance under section 49, article 13, chapter 110, Wagner's Statutes, the mere fact that the appellant has on file, or presents a copy of the transcript at the time such motion is made, shall not *of itself* be deemed "good cause" withing the meaning of said section.

Former rules rescinded.

RULE 23. All rules not included in the foregoing enumeration

ADDITIONAL RULES.

RULE 24. No writ of error from this court to the Court of Appeals can be issued by the clerk of this court in vacation. All applications in term time for writs of error to the Court of Appeals shall be accompanied by an affidavit of the attorney of record that the cause in which such writ of error is sued out is one of which this court has appellate jurisdiction under section 12, of article 6, of the constitution; and such affidavit shall state the facts conferring such jurisdiction, and thereupon the clerk shall issue such writ. (*Adopted at the April term, 1878*).

RULE 25 That, hereafter, in no case will extension of time for filing statements, abstracts and briefs be granted, except upon affidavit showing satisfactory cause. (*Adopted at the October term, 1878*).

RULE 26. A party, in any cause, filing a motion either to dismiss an appeal or writ of error, or to affirm the judgment, shall first notify the adverse party or his attorney of record, at least twenty-four hours before making the motion, by telegram, by letter, or by written notice, and shall, on filing such motion, satisfy the Court that such notice has been given. (*Adopted at the October term, 1879*).

RULE 27. All briefs of counsel shall hereafter contain, separate and apart from the argument or discussion of authorities, a statement in numerical order, of the points relied on, together with a citation of authorities appropriate under each point. And any brief failing to comply with this rule may be disregarded by the Court. (*Adopted at the April term, 1886*).

State of Missouri. Sct.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the above and foregoing is a true and complete copy of the rules of said Supreme Court as in force from 1877 to the April term of said court, 1891.

[SEAL]. Witness my hand and the seal of said court, done at the City of Jefferson, this 19th day of November, 1894.

JNO. R. GREEN, Clerk.

Mandate in this cause to St. Louis Circuit Court on affirmance of judgment by the Supreme Court of Missouri.

IN THE SUPREME COURT OF MISSOURI.

APRIL TERM, 1891.

Dorsey A. Jamison, as administrator *de bonis non* of Charles L. Bobb, deceased, and John H. Bobb, respondents, vs. appeal from Circuit Court, City of St. Louis.

Henry C. Bagot, Louisa Letcher, widow and administratrix of John Letcher, deceased; William H. Letcher, Robert F. Letcher, Laura C. Letcher, Julia A. Letcher, Giles C. Letcher, Fannie M. Letcher, Sarah S. Letcher, Julia A. Ashbrook and Levi L. Ashbrook, Charles Bobb and Martha E. Bobb, appellants.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said respondents recover against the said appellants their costs and charges herein expended and have therefor execution. (Opinion filed.)

STATE OF MISSOURI—SCT.

I, Jacob D. Conner, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the April term thereof, 1891, and on the 2d day of June, 1891, in the above entitled cause.

[SEAL.] Given under my hand and seal of said Court, at the City of Jefferson, this 13th day of June, 1891.

JACOB D. CONNER, Clerk.

STATE OF MISSOURI—SCT.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a true copy of the mandate in the case of Dorsey A. Jamison et al vs. Henry C. Bagot et al, sent to the Circuit Court of the City of St. Louis on the 10th day of July, 1891. And I further certify that Division No. 2 of said Supreme Court adjourned on the first day of July, 1891, until September 18, 1891; and that Court in Banc adjourned from June 29, 1891, until Court in Course.

[SEAL.] Witness my hand and the seal of said Court, done at the City of Jefferson, this 19th day of November, 1894.

RULE 20. All [illegible]

Extracts from appellant's brief in the Supreme Court of Missouri in this cause:

At the trial, the case stated in the petition was ignored, and without any warning of his intention the plaintiff tried to establish a right to a decree under his original and only petition, by attempting to show that Mrs. Bobb, at the time of her marriage with Charles Bobb had no property; that in 1861, he, Charles Bobb, conveyed to a trustee for her sole and separate use, a piece of real estate known as the "Haydon Place," which she sold in 1865 for $13,000, and that Mrs. Bobb with this money or money produced by investing it, bought the "Burd" notes mentioned in this petition, and had the property sold under the deed of trust which secured those notes, and which is also described in the petition, and bought in for her benefit by Bagot, who at the request of her agent, F. R. McGinnis, conveyed it to Letcher to secure him on a bond for McGinnis, and that Letcher, when relieved from liability, conveyed it to Martha E. Bobb, in whose hands they contended it was liable for Charles Bobb's debt.

Mrs. Bobb objected to this course of the plaintiff as an attempt to make a case not set up in the pleadings, but the Court permitted the evidence to go in and Mrs. Bobb excepted. As will be seen, however, the attempt of plaintiff to sustain such a case was a failure.

POINTS AND AUTHORITIES.

1. On the trial the plaintiff abandoned the case stated in his petition, and without warning sprung a new case of fraud, affecting Mrs. Bobb's title to the property, which was not alluded to in his petition, and was based on an entirely new theory. This demands a reversal of the judgment. The particular acts of fraud and the particular case on which recovery is sought must be fully stated in the petition.

Reed vs. Bott, 100 Mo. 62 and cases cited.
2 Dan'l. Ch. Pr. (Perk Ed). 856, and cases cited in note.
Gresley's Eq. Ev. pp. 158, 159, 160, 161.
Grossholtz vs. Newman, 88 U. S. (21 Wall) 488.
Foster vs. Goddard, 66 U. S. (1 Black) 518.
Gurney vs. Ford, 2 Allen 576.
2 Daul Ch. Pr. 324 and cases cited in N. 8.
Other vs. Somerthwaite 5, Eq. Cas. 442, 443.

BRIEF.

The petition and the decree in this case, agree, as indeed the latter merely copies the statements of the former by way of "findings," and awards just the relief asked by the plaintiff. But the petition was but a blind, to conceal the real attack, and this constitutes defend-

The defendant, Mrs. Bobb, naturally expected that when the plaintiff went to trial, nearly eight years after he had taken her deposition, and ascertained with the utmost minuteness the nature of her claim to the property, without amending his petition by inserting any charges of fraud alleged to have been participated in by her, or of which she was the beneficiary, that he went to trial prepared to prove the case his petition set forth. Instead of doing so, however, he entirely abandoned his pleading and proceeded as if his petition had set out a case of a fraudulent transfer of property to her by Charles Bobb, and the use of the property so transferred, as the means by which she acquired her title to the property described in the record of this cause.

This course has been emphatically condemned and in no case have the courts sustained a decree obtained by such procedure.

In Reed vs. Bott, 100 Mo. 62, this Court held that a decree obtained in this manner could not stand, and this ruling is in line with authority.

2 Daniels' Ch. Pr., 856, (Perk. Ed.), states the rule to be that the case proved, "*must be substantially the same case as that which he has stated upon the record*, for the Court will not allow a party to be taken by surprise by a case if proved on the other side different from that set up by him in the pleadings."

The subject is discussed in Gresley's Eq. Ev. pp. 158, 159, 160, and the author on p. 161, thus states the result of his examination of the cases.

"In short, of late years the rule has been considered as fully established, that the Court cannot notice matter, clearly proved, of which there is no allegation in the pleadings."

The question has often been before the Supreme Court of the United States.

In the case of "Grossholtz vs. Newman," 88 U. S. (21 Wall) 488, the Court says:

"It is next urged in the argument that the deed was given as a mortgage to secure a debt which has been paid."

"There is no allegation in the bill to support this claim. The recovery must be had upon the case as made by the pleadings or not at all."

And this is but an affirmance of a still more emphatic ruling on the same point, by the same court, in Foster vs. Goddard, 66 U. S. (1 Black) 518, in which the Court holds that,—

"In equity proceedings the proofs and the allegations must agree. *A party can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved.*"

And even if any charge of fraud, participated in by Mrs. Bobb or beneficial to her, had been made, she would have been entitled to a statement of the facts constituting the fraud. This is settled in Missouri by numerous cases, including Reed vs. Bott, 100 Mo. 67, above cited, and it is the recognition in this state of an universally accepted rule in equity.

In Daniels' Ch. Pr. 324, (310) and cases set forth in N. 8 treating of the effect of an allegation of fraud in a bill, it is stated that,—

"The facts upon which such allegation is founded must be stated, as there is great inconvenience in joining issue upon such a general charge, without giving the defendant a hint of any fact from which it is to be inferred."

This rule was applied in England, in a case in which the allegation of the bill so closely resembles that made in reference to Mrs. Bobb, in the petition of the case at bar, that we call the Court's attention to it. It is the case of Other vs. Somerthwaite, 5 Eq., Cas. 442-443, in which it was alleged against the defendants, as here it is alleged against Mrs. Bobb, that they "claimed an interest" in the property, and under that allegation it was sought to prove a case against them, but the Court would not permit such a pleading to stand for such a purpose, saying:

"Here is a general charge as to the defendants' interest * * * * * * The defendants will go to the hearing in utter ignorance of what it is the plaintiff proposes to prove, on the simple allegation that they have some interest."

Hence, it is clear that on this point also, the ruling of the Court in Reed vs. Bott, 100 Mo. 67, is fully in accord with the authorities and we contend therefore, that under that ruling and under all the authorities, the judgment in this cause ought to be reversed.

STATE OF MISSOURI. SCT.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the above and foregoing is a true copy of extracts from Appellant's Statement, Assignment of Errors, Points, Authorities and Brief, in the case of Dorsey A. Jamison et al. Respondents vs Henry C. Bagot et al. Appellants, as found on pp. 4, 5, 14, 16, 17 and 18, as fully as the same remain on file in my office.

[SEAL.]

Witness my hand and the seal of said court done at the City of Jefferson, this 19th day of November, 1894.

JNO. R. GREEN, Clerk.

Extracts from appellant's brief and reply in the Supreme Court of Missouri in this cause.

The first eight pages of respondent's brief is devoted to a labored argument to overthrow or get around the decision in Reed vs. Bott, 100 Mo. 62, and cases cited on pp. 17 and 18 of our brief, and we are not surprised at this effort, for all through the case they encounter the doctrine there laid down.

They charged that the Bird property in controversy here was bought with the money of Charles Bobb.

Ordinarily this allegation must be supported by evidence that the

See—of that fact there is no evidence, the proof being that Mrs. Bobb herself purchased the notes.

Plaintiff says to this, in effect, that the presumption of law is that Mrs. Bobb purchased them with her husband's money.

But the plaintiff herself destroyed that presumption by showing on the trial as part of his case that when Mrs. Bobb purchased those notes she possessed a considerable separate estate, real and personal, amply sufficient to furnish the credit and the funds used by her in buying the Bird notes and property.

Plaintiff in this state of the case and after this evidence is all in, attacks the title of Mrs. Bobb to those several pieces of real estate, and to those funds owned by her when she purchased the Bird notes, and does so without any warning in pleadings or elsewhere of his intention to make any such attack.

Mrs. Bobb on the trial objected repeatedly to the evidence offered by plaintiff for that purpose, but her objections were overruled by the Court, and she was thus forced without warning or time for preparation, to endure an attack on her title to her rents, her money and to five or six pieces of real estate, including the Hayden place, from the sale of which the purchase prices of the others were deprived. As this attack was made nearly eight years after the plaintiff had compelled Mrs. Bobb to go before notary Watson and depose as to everything about her titles to those pieces of property, and how derived, and although during those eight years, plaintiff gave not the faintest sign of an intention to attack those titles, by any amendment of his petition, we mildly characterized this proceeding of plaintiff as a trap and a surprise, and as being directly in the teeth of the ruling in Reed vs. Bott, 100 Mo. 62, and the other cases cited on pages 17 and 18 of our first brief, and of the numerous other cases on the same point cited in this brief.

The action of the Court below in permitting evidence to be introduced to show that this real estate, the Pine street, Dayton street and Gratiot street property, and the notes and money derived therefrom, on which and with which she purchased the Bird notes, was acquired by Mrs. Bobb in fraud of the creditors of her husband without any mention of those pieces of real estate, or of any change in connection with their acquisition, having been made in their petition, is squarely against the law as laid down in those cases, and hence those eighteen pages of plaintiff's brief devoted to the defense of that court's ruling on this point.

Plaintiff attempts to avoid the effect of the ruling in Reed vs. Bott (100 Mo. 62, above cited) by the argument that Mrs. Bobb having stated in her amended answer that she claimed to be owner of the property and plaintiff having denied it, on the issue thus made by her, the proof adduced tending to show conveyances to her by Charles Bobb in fraud of his creditors was proper and not chargeable as a surprise within the ruling of Reed vs. Bott.

But, in the first place, the issue of ownership was not raised by Mrs. Bobb. An allegation in the petition charged her with claiming an interest in the property. This called on her to state her title on

She did state a title—that of "true and sole owner," and thus informed them of the nature of her claim by which statement she strictly complied with the duty the rules of pleading impose on a claimant brought into court upon the allegation of the opposite party, that she claimed an interest unknown to him in the subject of the litigation, and if her answer was not sufficiently definite in not setting forth how she became owner, they ought to have objected to it. But they did not, and if they had, it should have been held good. See "Bliss of Code Pldg.," Secs. 223-4.

In fact Mrs. Bobb did exactly as the defendant did in "Other vs. Smurthwaite," 5 Eq. Cas. 442, 443, cited in our brief (p. 18), in which, on just such pleadings, an attempt was made, as in this case, to prove acts of fraud affecting the claimant's title and the Court held it could not be done.

Mrs. Bobb not only made the proper answer, but it was sustained at the trial in her pleadings by the plaintiff himself, who, as part of his case, proved Mrs. Bobb's ownership by the following conveyances of the property from Bird the acknowledged source of title:—

1. Bird and wife by trustee to Bagot (Pl'ffs Abs. of Rec., p. 3).

2. Bagot to Letcher (Pl'ffs Abs. of Rec. p. 3).

3. Letcher and wife to Martha E. Bobb (Pl'ffs Abs. of Rec. p. 3).

Mrs. Bobb having thus responded to their call, and proof being made to sustain her response, the plaintiff, of course without any of that "incredible coolness," of which a monoply is attributed to us, says she must be held to go further and show that she did not participate in allege frauds, which if established would defeat the title given by the above conveyances, but of the existence of which or of the intention of plaintiff to charge them not a word or a line of their pleadings imparts to her any notice. And this, although plaintiff had, so many years before, taken Mrs. Bobb's deposition in which her title was fully revealed.

Such traps are not permitted in equity practice. See Reed vs. Bott, *Supra*, and cases cited on pages 17 and 18 of our first brief, and cases cited in this brief.

Had we supposed that this attempt to get the case of Reed vs. Bott overruled, would have been made, we would have cited more cases to show the universality of the rule there laid down, and we hope we will not be excused for doing so.

That rule is settled in equity. Our best authority on equity practice thus states it:—

"It is also important in framing a bill, that everything intended to be proved should be stated, otherwise evidence cannot be admitted to prove it. This is required in order that the defendant may be made aware of what the nature of the case, to be made against him, is. The necessity of observing this rule has already been insisted on. Thus where a bill is filed to set aside a contract entered

client, on the ground of fraud and misrepresentation; the evidence adduced in support of the allegation of fraud did not substantiate the case laid in the bill; but a transaction was disclosed in the evidence which would have raised a question of considerable importance in favor of the plaintiff, if it had been properly presented upon the pleading, as, however, it has not been stated in the bill, no relief was given."

Dan. Ch. Pr. (Perkins Ed.) 335, citing
Montesquien v. Sandys, 18 Ves, 302;
Story's Eq. Pldg. sec. 257;
Waite on Fraudulent Conveyances, sec. 285;
Bump on Fraud'd Convey. 585, 1st parag. and cases cited in note.

The courts indeed hold that although the evidence of the funds might be property before the court as for instance, when it is admitted without objection; yet the court cannot notice it to attack conveyances or acts as to which no charge of fraud is made in the petition.

Foster vs. Goddard, 66 U. S. 518;
Montesquien vs. Sandys, 18 Ves. 302.

But we have not even that difficulty to contend with here, as we have shown, because we vigorously objected to the action of the court in admitting this evidence, at every proper place.

In addition to the above we cite the following cases, in which the doctrine is laid down, that no facts are properly in issue, unless charged in the bill, and that no relief can be granted for matters not charged, although they may be apparent from all other parts of the pleadings and evidence; for the court pronounces its decision *secundum allegata et probata*:

Story's Eq. Pldg. sec. 257;
Croket vs. Lee, 7 Wheaton, 522;
Jackson vs. Ashton, 11 Peters, 229;
James V. McKernon, 6 John. 564;
Barraque V. Manual, 2 End. 516;
Page vs. Alcott. 28 Vt. 465;
Gordon vs. Gordon, 3 Swan. 472;
Miller vs. Colton, 5 Ga. 341.
Parker vs. Beavers, 19 Tenn. 406;
Bailey vs. Ryder, 10 N. Y. 363;
Rowan vs. Bowles, 21 Ills. 17;
Land vs. Cowan, 19 Ala. 297;
Kall vs. Maltdy, 6 Price 240;

Showing that the law, laid down in Reed vs. Bott, 100 Mo. 62, is not peculiar to Missouri but is accepted everywhere.

Plaintiff seeks to avoid the decision of Reed vs Bott by arguing that in alleging the money which bought the Bird notes, to be the money of Charles Bobb, they are in effect charging, that as to the creditors of Charles Bobb, all the conveyances of real estate to Mrs. Bobb were really to Charles Bobb or to his use, and were in effect charged to be so in the petition by the allegation that the funds which purchased the Bird place was the money of Charles Bobb.

This very point is disposed of in Reed vs. Bott on page 66 of 100 Mo., where the court says that such an allegation is merely that of a conclusion of law and therefore insufficient to admit the evidence offered and admitted to show fraud in that case. And the same view is taken by the other authorities cited by us in this and our first brief.

STATE OF MISSOURI. SCT.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the above and foregoing is a true copy of extracts from Appellant's Brief and Reply, in the case of Dorsey A. Jamison et al. Respondents vs. Henry C. Bagot et al Appellants, as found on pages 6, 7, 8, 9, 10, 11 and 12, as fully as the same remain on file in my office.

Witness my hand and the seal of said court
[SEAL.] done at the City of Jefferson, this 19th
day of November, 1894,

JNO. R. GREEN, Clerk.

IN THE SUPREME COURT OF MISSOURI.

STATE OF MISSOURI.—SCT.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that at the April term, 1880, of the Supreme Court of the State of Missouri, there was filed in said court a transcript wherein John H. Bobb was respondent and Charles Bobb, James K. Taylor and Cora S. Taylor, his wife, and George L. Bobb were appellants, and that at said term of said court, the Court was composed of the following judges: T. A. Sherwood, W. P. Napton, Warwick Hough, J. W. Henry and E. H. Norton.

That in January, 1881, Judge W. B. Napton retiring, R. D. Ray presents his commission as judge of the Supreme Court and assumes the office.

That in January, 1883, the term of office of Judge T. A. Sherwood having expired, thereupon comes Judge T. A. Sherwood and presents his commission as judge of the Supreme Court and assumes the office.

That in January, 1885, the term of office of Judge Warwick Hough having expired, thereupon comes Francis M. Black and presents his commission as Judge of the Supreme Court and assumes the office.

That in January, 1887, the term of office of Judge J. W. Henry having expired, thereupon comes Theo. Brace and presents his commission as judge of the Supreme Court and assumes the office.

That in January, 1889, the term of office of Judge R. H. Norton having expired, thereupon comes Shepard Barclay and presents his commission as judge of the Supreme Court and assumes the office.

That in January, 1891, the term of office of Judge R. D. Ray having expired, thereupon comes James B. Gant and presents his commission as judge of the Supreme Court and assumes the office.

That on December 8, 1882, the said cause of John H. Bobb respondent vs. Charles Bobb et al. appellants was argued and submitted to the Court.

That on the 4th day of June, 1883, the said cause was affirmed.

That on June 21, 1883, the said appellants in said cause filed a motion for a rehearing.

That on June 21, 1884, said motion for a rehearing was sustained, and the cause set down for hearing on October 21, 1884.

That on the 21st day of October, 1884, said cause was passed.

That on the 22nd day of October, 1884, said cause was argued and submitted to the Court.

That on January 26, 1886, the said cause was affirmed, opinion by Judge Francis M. Black, which said judgment was in words and figures as follows, to-wit: "Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid by the said St. Louis Court of Appeals rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the Court, that the said respondent recover against the said appellants, his costs and charges herein expended. and have therefor execution. (Opinion Filed)."

[SEAL]. Witness my hand and the seal of said Court, done at office in the City of Jefferson, this 20th day of November, 1894.

JNO. R. GREEN, Clerk.

IN THE SUPREME COURT OF MISSOURI.

STATE OF MISSOURI.—SCT.

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify, that the case of James Reed, respondent, vs. Kate Reed et al appellants, was decided at the October term, 1889, of this court, and on the 18th day of October, 1889, and that the judges who composed the Supreme Court of Missouri at that time were Judges R. D. Ray, T. A. Sherwood, F. M. Black, Theo. Brace and Shepard Barclay.

That during the October term, 1890 and up to January 5th, 1891, the judges of the Supreme Court of the State of Missouri were: R. D. Ray, T. A. Sherwood, F. M. Black, Theo. Brace and Shepard Barclay.

That on January 5th, 1891, James B. Gantt, George B. Macfarlane and John L. Thomas presented their commissions as judges of the Supreme Court and assumed the office.

That on said January 5th, 1894. The Supreme Court of the State of Missouri was divided into two divisions: the first division being composed of T. A. Sherwood, F. M. Black, Theo. Brace and Shepard Barclay.

That the second division of said Court was composed of James B. Gantt, George B. Macfarlane and John L. Thomas.

That division No. 1 as thus composed, adjourned for the April term, 1891 on the 29th day of June, 1891 until Court in course.

That division No. 2 as thus composed, adjourned on the 1st day of July, 1891 until September 18th, 1891.

That the Court in Banc, composed of both divisions, adjourned for the April term, 1891, on the 29th day of June 1891, until Court in Course.

SEAL

Witness my hand and the seal of said Court, done at the City of Jefferson, this 21st day of November, 1894,

JNO. R. GREEN, Clerk.

Office Supreme Court, U. S.
FILED.
DEC 10 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB ET AL., PLAINTIFFS IN ERROR,

vs.

D. A. JAMISON, ADMINISTRATOR, ETC., AND JOHN H. BOBB, DEFENDANTS IN ERROR.

Reply of Defendants in Error to Brief of Plaintiffs in Error in Opposition to Motion of Defendants in Error Either to Dismiss Writ of Error or to Affirm the Judgment of Supreme Court of Missouri, under Rule 6, Sec. 5, of This Court.

T. J. ROWE,
Attorney for Defendants in Error.

GOTTSCHALK PRINTING CO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1894.

No. 267.

MARTHA E. BOBB ET AL., PLAINTIFFS IN ERROR,

vs.

D. A. JAMISON, ADMINISTRATOR, ETC., AND JOHN H. BOBB, DEFENDANTS IN ERROR.

Reply of Defendants in Error to Brief of Plaintiffs in Error in Opposition to Motion of Defendants in Error Either to Dismiss Writ of Error or to Affirm the Judgment of Supreme Court of Missouri, under Rule 6, Sec. 5, of This Court.

In view of the fact that plaintiffs in error have filed herein a voluminous brief in opposition to our motion to dismiss writ of error, we deem it proper, in reply thereto, to briefly call the attention of the court to some of the questions therein presented.

We again insist that Hon. James B. Gantt, who was the presiding Judge of Division 2 of Supreme Court (as it appears from printed record, page 230), should have signed citation and allowed writ of error; and it is apparent from the record in this case that he would have refused to sign the citation and allow the writ, because he knew that no federal question was involved in the case.

Section 4 of the constitutional amendment of January 1st, 1891, to Constitution of Missouri, provides: "Where a federal question is involved the cause, on the application of the losing party, shall be transferred to the court for its decision." Judges Gantt, Macfarlane and Thomas, constituting all the Judges of Division 2 of the Supreme Court of Missouri, were of the opinion that no federal question was involved in the case. The case was before them; they read the record: they read the abstracts, statements and briefs; they heard the oral arguments; and they could discover no federal question in the case, and consequently they overruled the motion of plaintiffs in error, (who were appellants below), to transfer the case to the court in banc. If a federal question was involved, it was their duty, under the above constitutional provision, to obey its mandate and sustain the motion of the plaintiffs in error, and if they refused to do so, plaintiffs in error had their remedy by an application to the court in banc to order the Judges of Division 2 of said court to make such transfer. Before plaintiffs in error could come to this court they should have exhausted their remedy in the State court.

When a federal question is involved in a cause, under the Constitution of Missouri, on the application of the losing party, it must be tranferred to the court in banc; and the court rendering the judgment in the cause can exercise no discretion in the matter.

Plaintiffs in error, by proper procedure, should have applied to the court in banc for transfer of cause, and if they were of the opinion that it was a proper case to transfer from Division 2 of the court to the court in banc, they would have so ordered, and if they declined to make the order then plaintiffs in error would have exhausted their remedy in the State court, and would then be in a position to apply to this court.

But Judges Gantt, Macfarlane and Thomas were right when they refused to transfer the case to the court in banc, because no federal question was involved in the case.

The contention, in the State court that the petition upon which an action is tried, fails to state facts sufficient to constitute a cause of action, does not raise a federal question. If it does, then this court will be called upon to pass on the sufficiency of the pleadings in every case where defendant says petition fails to state facts sufficient to constitute a cause of action, or plaintiff says that answer fails to state facts sufficient to constitute a defense, and are unsuccessful in such contention in the State court.

In the matter of determining the sufficiency of a pleading in the State court, it has been the invariable rule of this court to defer to the views of the State Supreme Court, and when the highest court of the State has decided that the pleadings are sufficient, this court will not on writ of error review their action. But the claim of plaintiffs in error that petitioner fails to state facts sufficient to constitute a cause of action, and that the opinion given by the court in this case is contrary to the opinion as announced in Reed vs. Bott, 100 Mo., 62, is imaginary and not real. Reed vs. Bott, *supra*, is not a parallel case as to the facts, and Judge Thomas so declared in his opinion herein which is printed in full on pages 231 to

245, inclusive, of the record. And that the petition stated a good cause of action is apparent from said opinion of Judge Thomas where he says:

"Defendants' counsel contend that on the trial the "plaintiffs abandoned the case stated in the petition, and, "without warning, sprung a new case of fraud, affecting "Mrs. Bobb's title to the property, which was not alluded "to in their petition, based on an entirely new theory. We "do not concur in this view of the issues tendered by the "petition. The averment is that Charles Bobb bought "the land and paid for it, and had the title placed in Bag-"gott and Letcher for the purpose of hindering and delay-"ing his creditors, and to prevent the property from being "subjected to the payment of the judgment in favor of "plaintiffs; and then adds that the plaintiffs are informed "and believe, and so state, that Martha E. Bobb claims to "be the equitable owner of the property, and to have paid "for it, although the title stood in John Letcher; and it "is prayed that she be made a party defendant. It is "conceded in the argument that the allegations of the "petition make out a good case against Baggott and "Letcher; but, as there are no allegations that Mrs. Bobb "was guilty of any fraud, it was error, it is claimed, to "admit evidence affecting her title. This argument pro-"ceeds upon the theory that the pleadings admit the title "to the property in controversy to be in Mrs. Bobb. This "is an error. The petition positively asserts that the legal "title is in John Letcher, and it was put there by Charles "Bobb to cover up the property from his creditors. Mrs. "Bobb, it is alleged, claims she was the owner of the "property, in equity, and had paid for it. This claim of "hers, which is alleged in the petition, cannot be held to "nullify the previous statements of the petition that Charles "Bobb was in fact the owner of the property, had paid for "it, and had it conveyed to Letcher to defraud his creditors.

"Take the petition altogether, there is but one conclusion "that can fairly be reached, and that is that whatever "claim to the property Mrs. Bobb might interpose was "subject to the conditions on which Letcher held it. "When the trial began, the court did not know and could "not know from the pleadings, where the legal title to the "property was. Plaintiffs alleged it to be in Letcher, while "Mrs. Bobb set up that she had it. The evidence showed "that Letcher conveyed the property to Mrs. Bobb by deed "dated May 1, and acknowledged May 17, 1881, and "recorded March 16, 1882. Hence at the time the peti-"tion was filed Letcher did hold the legal title.

"It is insisted, however, that when the deed vesting "the title in her was recorded several years prior to the "trial, and Mrs. Bobb disclosed in her answer, filed in "1887, that she was clothed with the legal title to the "property, plaintiffs ought to have amended their petition "so as to conform to the facts occurring subsequent to the "institution of the action. Plaintiffs could have done "this; but we know of no rule of pleading, either in a "court of equity or a court of law, requiring them to do "it. If the occurrences subsequent to the institution of "the suit were favorable to Mrs. Bobb, it was her duty to "set them up and plead them as a defense to the action. "The plaintiffs stood, and had a right to stand, upon the "facts as they existed at the time they filed their petition. "The case of Reed vs. Bott, 100 Mo., 62, mainly relied "on by defendants to support their contention, we do not "regard as in point. There it was averred that John A. "Bott bought the property, paid for it, and had it con-"veyed to his wife to defraud his creditors; while the evi-"dence showed that John Bott (John A. Bott's father) "bought the property, which was conveyed to the wife of "the latter; and it was held that there was a fatal variance "in the proof from the allegations of the petition. The

"court says: 'The land was purchased and paid for by "'John Bott. If there is any fraud in the case, it is in "'the transaction by which the land was acquired from "'John Bott, and in the methods by which payments "'were made to him. This transaction is not set up in "'the petition at all. The petition is so framed as to "'exclude the idea that there ever was such a transac-"'tion.' There the plaintiff proved a case not alleged; "here the plaintiff proved, or tried to prove, the identical "facts averred in the petition, viz: (1) That Charles "Bobb did pay for the land; (2) that Letcher held the "legal title to it; (3) that Baggott and Letcher paid "nothing for it; (4) that the title was placed first in Bag-"got, and subsequently in Letcher, to defraud creditors; "and (5) that Bobb was insolvent. The two cases are "not parallel in any respect.

The foregoing opinion is a full, perfect and complete answer to the claim of plaintiffs in error that the petition fails to state facts sufficient to constitute a cause of action against Martha Bobb, or that it is contrary to the ruling of the Supreme Court of Missouri in Reed vs. Bott. Due process of law in the Fourteenth Amendment "refers to "the law of the land in each State, exerted within the limits "of those fundamental principles of liberty and justice "which lie at the base of all our civil and political institu-"tions, and the greater security for which resides in the "right of the people to make their own laws and alter "them at their pleasure."

The law of the land in Missouri is that the petition in this case states a good cause of action, and said law is within the limits of the fundamental principles of justice.

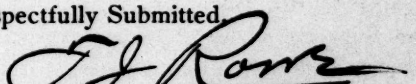
Our code requires of the pleader in his petition a plain and concise statement of the facts constituting a cause of action, without unnecessary repetition. The evidence should not be stated. The petition in this case was such

a statemont as our code requires. It was a plain and concise statemant of facts as they were on April 4, 1881, when it was filed in the Circuit Court.

There has been no issue tried variant from that set forth in the bill, viz.: As to Charles Bobb's fraud in causing the title to property really belonging to him to be placed in the names of other parties to cheat and defraud his creditors. Such was the case alleged; such was the case proved. At the trial of cause in the Circuit Court Martha E. Bobb expressed no surprise and asked for no delay. If she had under the authority of Omer vs. Smurthwaite, L. R, 5 Eq., 437 and 441 the court might have directed the case to stand over.

The position, that by the proceedings in the State court, the plaintiff's in error were deprived of their property without due process of law, is without merit and presents no federal question; and it is manifest the writ of error was taken for delay only, and it should be dismissed.

Respectfully Submitted,



Attorney for Defendants in Error.

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Supreme Court of the United States.

October Term 1894.

No. 267.

MARTHA E. BOBB, CHARLES BOBB, HENRY C. BAGOT, ET AL., PLAINTIFFS IN ERROR,

vs.

DORSEY A. JAMISON, ADMINISTRATOR OF THE ESTATE OF CHARLES L. BOBB, DECEASED, AND JOHN H. BOBB.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

The Petition of Martha E. Bobb, Plaintiff in Error, and the other Plaintiffs in Error for a Rehearing of the Motion of Defendants in Error to Dismiss the Writ of Error.

MICHAEL KINEALY,
Attorney and of Counsel for Plaintiffs in Error.

JAMES R. KINEALY,
Also of Counsel for Plaintiffs in Error.

Supreme Court of the United States.

October Term. 1894.

No. 267.

MARTHA E. BOBB, CHARLES BOBB, HENRY C. BAGOT, ET AL., PLAINTIFFS IN ERROR,

vs.

DORSEY A. JAMISON, ADMINISTRATOR OF THE ESTATE OF CHARLES L. BOBB, DECEASED, AND JOHN H. BOBB.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

The Petition of Martha E. Bobb, Plaintiff in Error, and the other Plaintiffs in Error for a Rehearing of the Motion of Defendants in Error to Dismiss the Writ of Error.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Plaintiff in error, Martha E. Bobb, and the other plaintiffs in error herein, come and respectfully state to this Honorable Court that it appears from its decision on the motion filed by defendants in error to dismiss this cause that said motion is sustained for want of jurisdiction of this Court, on authority of the case of Duncan vs. Missouri, 152 U. S. 377.

That the principal Federal question which plaintiffs in error claim to exist on this record arose thus: on the trial of this cause—in which the complaint alleges that Charles Bobb is indebted and

is the owner of property which the Court is asked to order sold to pay his debts, and that Martha E. Bobb claims an interest in the property and in the means by which it was purchased — whilst Martha E. Bobb was engaged in the trial vindicating her claimt evidence was introduced without notice or warning to her and against her repeated objections and exceptions, to show that at many and various times during a period of twenty years previous to that trial, personal property and real estate were obtained by her from Charles Bobb, ostensibly for value, but under cirumstances constituting fraud on creditors of the latter, although no such fraud is charged or hinted at in the petition nor are any of the alleged fraudulent transactions alluded to therein; and that on that evidence the property of Martha E. Bobb is decreed to be sold to pay Charles Bobb's debts. This proceeding was duly objected to in the Circuit and Appellate Courts, as is shown in our brief and is claimed to be a taking of the property of Martha E. Bobb without due process of law and in violation of the Fourteenth Amendment, and in support of this claim a large number of cases are cited and abstracted on pp. 20 to 35 of the brief of plaintiffs in error on file in this Court:

That the opinion of this Court denying its jurisdiction of this cause which rests solely on the decision of the case of Duncan vs. Missouri, 152 U. S. 377, must therefore have been rendered either because this Court deemed the said action of the trial Court, due process of law or because this Federal question was overlooked by the Court or because the Court relied upon the incorrect statement of the defendants in error made in his first brief that only one Federal question was claimed to exist in the case — which was not this one — or because this Court came to the conclusion that the question was not properly saved for review in this Court:

That, in view of the authorities and the facts in the record, to which the attention of this Court was called (Brief of P. in E. p. 17 to 20), if this Court arrived at the conclusion that the point as to this latter question was not properly saved, it may have been due to an oversight on the part of the Court, or, because the Court declined to adhere to its former rulings, set forth under point II. of our brief on the motion to dismiss the writ of error:

That if plaintiffs in error be correct in their contention, that the action of the Court below—in receiving evidence and decreeing as to alleged fraudulent conveyances and gifts without notice to plaintiff in error, Martha E. Bobb, either by the pleadings or otherwise, that the such charges would be made—was not *due process of law* and that as a necessary result, the decree of the Court below was void, and is therefore open to attack at all times, then it is respectfully submitted that as the opinion of this Court in its present shape might hereafter, in the State Courts, be contended

to be a decision that this Court had no jurisdiction because this action of the trial Court *was* due process of law and therefore *not* a Federal question, or, in other words, that the decree was valid; then that the plaintiff in error ought to have an expression of opinion from this Court to the effect that this Court did not obtain jurisdiction of the cause within the authority of the decision of Duncan vs. Missouri, 152 U. S. 377, because of the failure of plaintiffs in error to properly present or save the question for review by this Court in this cause and *not* because that the course pursued by the Court below *was* due process of law.

And your petitioners further submit that the opinion in Duncan vs. Missouri, 152 U. S. 377, further decides that the State has a right to delegate certain classes of cases to one appellate tribunal and certain classes to another; whereas, the other complaint which we make and which we contended raised the other Federal question, is based upon the fact that the Supreme Court of Missouri, although having the power under the Amendment to the Constitution, did *not* make classifications as to civil cases, but made arbitrary assignments of such cases to one or other Division of the Missouri Supreme Court and therefore that the case of Duncan vs. Missouri should not be held to apply:

Your petitioners further state that the attention of this Court was called to the first Federal question hereinbefore mentioned, on pages twenty to thirty-five, inclusive, of our brief filed in this Court and the attention of this Court was called to the peculiar features of the other Federal question on pages thirty-five to forty-two, of our brief, and extracts were given from authorities in each case, in support of our respective points.

Wherefore the plaintiffs in error respectfully pray the Court to give them an opportunity of being heard on these questions by granting a rehearing of said motion to dismiss their writ of error or if, the first Federal question appears on the record but is not properly presented here, to render an opinion stating that this Court has not determined that the action of the Trial Court in admitting evidence and decreeing as to alleged acts of fraud not mentioned in the pleadings, was due process of law, but that the question was still open so far as this Court was concerned.

Attorney and of Counsel for Plaintiff in Error.

Also of Counsel.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Martha E. Bobb, one of said plaintiffs in error, being duly sworn, on her oath says that the facts hereinbefore set forth are true, to the best of her knowledge, information and belief.

MARTHA E. BOBB.

Subscribed and sworn to this 9th day of January, A. D. 1895, before me a Notary Public within and for said City of St. Louis, Missouri.

Witness my hand and notarial seal hereto the day and year above written.

My commission expires Nov. 2nd, 1895.

L. A. McGINNIS,

Notary Public, City of St. Louis, Mo.

The undersigned, an attorney and counsellor of this court, certifies that he has examined the foregoing petition and the matters referred to therein, and believes that it is correct as to the facts and as to the propositions of law therein set forth and states good grounds for the relief prayed.

Michael Kinsley